

**REQUEST FOR PROPOSALS
RFP No. 2017-004**

**OPERATIONS and MAINTENANCE SERVICES FOR
THE CITY OF ALAMOGORDO FAMILY ENTERTAINMENT CENTER
ALAMOGORDO, NEW MEXICO**

I. Introduction

A. Purpose of this Request For Proposals

The City of Alamogordo is soliciting sealed proposals from qualified firms to provide professional services based on the scope of work described below. All potential Offers are to read, understand and accept the requirements of this Request for Proposals.

B. Project Description/Scope of Work

The City seeks to secure a comprehensive lease and management agreement for its Family Entertainment Center facility. The format of the agreement shall conform to Lease/Operate/Maintain Agreement specified by the City and set forth in Attachment four (4). The City retains the right to negotiate the terms of that agreement with the successful firm.

The successful firm will be responsible for the operation and maintenance of the twenty-four lane bowling alley and will be provided with 240 assorted size bowling balls and 288 pairs of assorted size bowling shoes, the scoring system (as well as television monitors) will be included with the facility. The bowling area is fully furnished with tables and benches for seating.

All laser tag equipment is included with the facility.

The successful firm shall be responsible for the operation and maintenance of the restaurant to include ordering, preparing, and serving of food and beverages. The restaurant facility is furnished to seat patrons (to accommodate approximately 70 patrons indoors and 60 patrons in the patio area.) Restaurant includes a full-service kitchen, but the successful firm will supply small kitchen wares such as plates, glasses, utensils, pots/pans, etc. The City will lease to the successful firm a municipal liquor license should they wish to serve liquor products. A floorplan of the restaurant and kitchen are attached hereto as **Attachment 5**.

The successful firm will be responsible for collecting fees for use of facilities, and maintaining the equipment associated with the bowling lanes, laser tag, and restaurant. All items shall be sold at competitive prices.

The successful firm will be responsible for the purchase or rental of arcade equipment (including, but not limited to, and associated tickets/tokens/prizes, etc.); the purchase, installation, and maintenance of a Point of Sale (POS) System; and any satellite or cable TV services (however, the television monitors are included and will be installed throughout the facility.)

The successful firm shall be responsible for adequate staffing of the facility including paying wages, scheduling, payroll taxes, and worker's compensation if required. The facility will be smoke-free. The facility will be operated and maintained at the successful firm's own risk without any benefit of financial guarantees from the City.

C. Procurement Manager

1. Procurement Manager is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Barbara Pyeatt, Chief Procurement Officer
Address: Purchasing Department
2600 N. Florida Ave.
Alamogordo, NM 88310
Telephone: (575) 439-4116
Fax: (575) 439-4117
Email: bpyeatt@ci.alamogordo.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Purchasing Department
Attn: Barbara Pyeatt, CPO
Reference RFP Name: RFP 2016-00X Operations and Maintenance Services for the Family Entertainment Center

Address: 2600 N Florida Ave.
Alamogordo, New Mexico 85310

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding this procurement.

NOTE: DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF OTHER THAN PURCHASING STAFF REGARDING THIS RFP WILL RENDER THE PROPOSAL NON-COMPLIANT.

II. Conditions Governing the Procurement

This section of the RFP contains the schedule, description and conditions governing the procurement

A. *Sequence Of Events*

The Procurement Manager will make every effort to adhere to the following schedule. However, if the Selection Committee makes a selection at the proposal Short Listing, oral presentation will not apply. :

Action	Responsible Party	Due Dates
Issue RFP	City of Alamogordo	May 8, 2017
Deadline to submit Written Questions	Potential Offerors	May 24, 2017
Addenda if necessary	City of Alamogordo	May 26, 2017
Submission Proposals	Potential Offerors	June 13, 2017
Proposal Evaluation	Evaluation Committee	June 19, 2017
Oral Presentation if requested	City of Alamogordo	TBA
Authorization of Award	City Commission	June 27th, 2017

B. *Explanation of Events*

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A, above.

1. Issuance of RFP

This RFP is being issued on behalf of the Community Services Department, City of Alamogordo.

2. Distribution List Response Due

Potential Offerors can hand deliver, return by facsimile, email or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, ATTACHMENT 3, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. **Pre-Proposal Conference**

A pre-proposal conference will not be held for this project.

4. **Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 PM Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section II, Paragraph C.

5. **Response to Written Questions**

An Addendum will be issued in response to all written questions and will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list and on the City's website. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2.

All offerors will be required to acknowledge receipt of RFP amendment(s) in writing as part of their proposal transmittal. A failure to acknowledge receipt of RFP amendment(s) may be cause for rejection of the proposal.

6. **Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON see Section II A. Sequence of Events. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph C2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 2017-004 Operations and Maintenance Services for Family Entertainment Center. Proposals submitted by facsimile, or other electronic means, will not be accepted.

At all times, it shall be the responsibility of the offeror to ensure its proposal is delivered to the City of Alamogordo by the proposal due date and time. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

A public log will be kept of the names of all Offer organizations that submitted proposals. The contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Qualification has been awarded.

Proposals accepted by the City shall be valid for a period of ninety (90) days following the deadline for the proposal submittal.

8. Proposal Evaluation

A Selection Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

9. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II, A Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Issuing Department and Procurement Manager.

11. Contract Awards

The Contract will be finalized with the most advantageous Offeror. In the event that mutually agreeable terms cannot be reached within the time specified, the City of Alamogordo reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or reserves the right to cancel the award.

12. Protest Deadline

Any protest by an Offeror must be in conformance with Section 2-13-300 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the commission's approval to negotiate and will end at 5:00 pm MDT on the fifteenth (15) calendar day following that approval. Protests must be written and must include the name and address of the Protester and the solicitation number(s). It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Manager. The protest must be delivered to the following address:

Name: Barbara Pyeatt
Title: Chief Procurement Officer
Address 2600 N. Florida Ave.
Alamogordo, NM 88310
Fax Number: 575-439-4117

Protests received after the deadline will not be accepted.

C. General Requirements

1. Acceptance of Conditions Governing the Procurement

This procurement will be conducted in accordance with the City of Alamogordo's procurement regulations

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Subcontractors

The selected firm shall not assign, sublet, or transfer their interest in this agreement without prior written consent from the City. If such an assignment is allowed, the firm entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.

4. Consultants

Since the award is made on a quality-based evaluation process, replacement of consultants after award of and prior to the contract execution may cause the Offeror to be disqualified.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collate, or assemble proposal materials.

6. Offerors Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Disclosure of Proposal Contents

The proposals will be kept confidential until negotiations are completed by City of Alamogordo. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, City of Alamogordo shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This procurement in no manner obligates the City of Alamogordo or any of its Departments to the use of Offeror services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when Procurement Department determines such action to be in the best interest of the City of Alamogordo.

10. Sufficient Appropriation

Any agreement or contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the offeror. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the offeror as final.

11. Legal Review

The City requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought in writing to the attention of the Procurement Manager.

12. Governing Law

This procurement and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

13. Basis for Proposal

Only information supplied, in writing, by the City of Alamogordo through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The City of Alamogordo reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this solicitation. The contents of this solicitation, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the City of Alamogordo's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The City of Alamogordo may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the City of Alamogordo and will result in disqualification of the Offeror's proposal.

15. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City of Alamogordo. Not to be included in page count

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City of Alamogordo and the Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

17. Offeror Qualifications

The Selection Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Selection Committee will reject the proposal of any potential Offeror who is not a responsible Offeror or

fails to submit a responsive offer as defined in Section 2-13-110 of the City of Alamogordo Procurement Ordinance.

18. Right to Waive Minor Irregularities

The Procurement Manager reserves the right to waive minor irregularities. The Procurement Manager also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Procurement Manager.

19. Change in Representatives

The City of Alamogordo reserve the right to require a change in offeror representatives if the assigned representatives is not, in the opinion of the City of Alamogordo, meeting its needs adequately.

20. Notice - Bribery and Kickbacks

New Mexico criminal statues imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. City of Alamogordo Rights

The City of Alamogordo in agreement with the Procurement Manager reserves the right to accept all or a portion of a potential Offeror's proposal.

This procurement in no manner obligates the City of Alamogordo or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

22. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors must secure from the Procurement Manager and the Owner written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal.

23. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the City of Alamogordo.

24. Confidentiality

Any confidential information provided to, or developed by, the firm in the performance of services under this contract shall be kept confidential and shall not be made available to any individual or organization by the firm without the prior written approval of the City Commission.

The Offeror agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the City Commission's written permission. By confidential information, we mean the software and related materials, including enhancements, which are designated as proprietary and confidential trade secrets of the licensor and licensee of the software. Firm(s) will not remove any copyright, trademark, and other proprietary rights notice from the licensed software or related materials.

25. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

26. Use of Electronic Versions of this RFP

This solicitation is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the solicitation. In the event of conflict between a version of the solicitation in the Offeror's possession and the version maintained by the City of Alamogordo, the version maintained by the City of Alamogordo shall govern.

27. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See Attachment 2) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made. **Failure to complete and return the signed unaltered form will result in disqualification.**

28. Conflict of Interest; Governmental Conduct Act.

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

29. Utilization of Proposal

The City of Alamogordo may enter into cooperative purchasing agreements with other political subdivisions or other governmental entities of the State of New Mexico in order to conserve resources, reduce procurement costs, and improve the timely acquisition of supplies, equipment and services. The Respondent to whom a contract is awarded under this solicitation may be requested by other parties to such a cooperative purchasing agreement to extend to those parties the right to purchase supplies, equipment and services provided by the Respondent(s) under its contract with the City of Alamogordo, pursuant to terms and conditions stated therein.

30. Award of Contract

The award shall be made to the responsible Offeror whose proposal is most advantageous to the City of Alamogordo taking into consideration the evaluation factors set forth in this solicitation. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top three ranked firms to develop final rankings or may consider the rankings based on the proposals as final.

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

III RESPONSE FORMAT AND ORGANIZATION

A. Number of Responses

Offeror's shall submit only one proposal in response to this RFP.

B. Proposal Format

1. Proposal Organization

Offerors shall submit **Six (6)** hard copies and 1 electronic copy of their proposal to the location specified in this RFP, on or before the closing date and time for receipt of proposals. Proposals shall follow the format as described below:

- A maximum of **Twenty-five (25)** pages of 8.5" by 11" paper, including title, index, and other required information, not including front and back covers, transmittal letter, Veteran's Preference Certification Form, Resident Business Certificate, or Campaign Contribution Disclosure Form.
- Bound on left-hand margin.
- Minimum font size 10.
- Front cover with RFP number, project title, date, and firm's name (not included in page limit).
- Back cover without any text (not included in page limit).

- The proposal must be organized and indexed in the following format and order and must contain, as a minimum, all listed items in the sequence indicated:
 1. Letter of transmittal, not to exceed one page (not included in page limit). If applicable, will include **written acknowledgment of receipt of RFP amendment(s)**;
 2. Responses to the three (3) Selection Criteria items, addressing all requested information, in the order presented in this RFP above. Provide the Selection Criteria title at the beginning of each response so that it is clear what proposal text is addressing each Selection Criteria item.
- If applicable, Offerors shall complete Attachment 1 – Resident Veterans Preference Certification Form and submit with each copy of the proposal (not included in page count).
- If applicable, Offerors shall provide Resident Business Certificate and submit with each copy of the proposal (not included in page count).
- Offerors shall complete Attachment 2 – Campaign Contribution Disclosure Form and submit with each copy of the proposal (not included in page count).
- To preclude possible errors and/or misinterpretations, the proposal must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by offeror prior to scheduled proposal submittal deadline. Failure to do so may be just cause for rejection of proposal.
- Proposals shall be delivered in sealed envelopes which shall be clearly marked “**2017-004, Operations and Maintenance Services for the Family Entertainment Center**” on the outside of the envelope. Proposals shall be signed by a representative authorized to bind the company.

IV. EVALUATION

A. *Criteria*

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

The following criteria form the basis upon which evaluation of Proposals will be made.

1) Management/Operating Plan. Provide a management structure and staffing plan. Describe the proposed management structure including on-site and off-site management and support. Provide an explanation of the proposed staffing strategy. Address a proposed schedule for assuming responsibility for operation and maintenance. Discuss staffing levels and proposed periods and hours of operation. Identify strategy for marketing the facility. Provide a statement of why the Firm should be selected and what differentiates its firm from others.

2) Business/Financial Plan. Provide a business plan identifying expected revenues along with operation and maintenance expenses. Discuss bowling and other service rates, the price list for the concession items and alcohol (if applicable), and the distribution of revenues from the proposed areas

of operation. Provide a financial plan which demonstrates revenues will be sufficient to sustain operation and maintenance costs without the need for a subsidy from the City. Expenditures must clearly reflect projected payments to the City and show year-by-year projections for the proposed term. Submit documentation of current financial capacity to manage and operate the facility. Proof, to the satisfaction of the City, including audited financial statements and letters from bankers, that the Firm has sufficient financial capacity to cover any annual operating shortfall/loss related to the Project. Discuss any financial contribution the Firm is willing to contribute to the project.

3) Contract Terms and Conditions – The contract between the City and the successful Firm shall follow the format specified by the City and set forth in Attachment 4, Lease/Operate/Maintain Agreement. However, the City reserves the right to negotiate with a successful Firm with respect to the terms and conditions of the Lease/Operate/Maintain Agreement. Specifically, the City would entertain an initial short-term waiver of lease payments during a start-up period for the successful Firm. The contents of this RFP, as revised and/or supplemented, and the successful Firm’s proposal will be incorporated into and become part of the contract.

Scoring Value

Criteria	Weighted Value
Management/Operating Plan	300
Business/Financial Plan	300
Lease Payments	400
Total	1,000

Additional Preference Award Points Available per #8, #9 or #10 below

An offeror must specify which preference below they would claim if qualifying for more than one. The preference values are not cumulative.

1. Resident Veterans Preference Certification, Attachment 1 (Certificate Required)

Available Points = 7, 8 or 10 Percent of total Points

Complete the Resident Veterans Preference Certification Form in Attachment 1, if applicable.

2. New Mexico Business Preference (Certificate Required)

Available Points = 5 Percent of total Points

Points will be awarded based upon offeror’s ability to provide a copy of a current Resident Business Certificate.

10. Local Business Preference

Points will be awarded based upon offeror’s ability to provide proof of Local Business Residence.

Available Points = 10 Percent of total Points

B. Evaluation Process

1. All offeror proposals will be reviewed for compliance with the mandatory requirements as

stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

2. The Procurement Manager may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors may be asked to present oral presentation. Points awarded from oral presentations will be added to the previously assigned points to attain final scores.
5. The responsible Offeror (s) whose proposals is most advantageous to the City, taking into consideration the evaluation factors in Section IV, will be recommended for Contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

BID EVALUATION CRITERION FOR AREA BUSINESSES – LOCAL BUSINESS PREFERENCE

Effective March 20, 2015, the Alamogordo City Commission adopted Ordinance No. 1490 establishing Bid evaluation criterion for area businesses. Any business licensed in New Mexico, with a current business registration from the City of Alamogordo, with fixed offices or distribution points within fifteen (15) miles of the city limits of Alamogordo and able to furnish evidence of payment of New Mexico Gross Receipts tax shall qualify. If a non-Area Business is the highest ranking Prequalified Candidate, the evaluation score of the proposal submitted by an Areas Business shall be multiplied by a Local Preference Factor of 1.10. If the resulting score of the Area Business receiving the Local Preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to be awarded the Area Business receiving the preference. If no proposals are received from an Area Business, or if the proposal received from an Area Business does not qualify for an award after multiplication by the Local Preference Factor, the contract shall be recommended to be awarded the highest ranking proposer.

View the following link for the complete Ordinance No. 1490 Local Preference:

<http://ci.alamogordo.nm.us/AssetsOrdinance+1490.pdf>

This procurement will be conducted in accordance with the City of Alamogordo Purchasing Ordinance No. 1304.

RESIDENT VETERANS PREFERENCE CERTIFICATION

To receive a Veterans Preference pursuant to Section 13-1-21 and 13-1-22 NMSA 1978, a resident veteran's business shall submit with its proposal a copy of a valid "Resident Veterans Preference Certification" issued by the Taxation and Revenue Department. For the purpose of scoring points, the State of New Mexico General Services Department Purchasing Division Policy Memo FY13-001 shall apply to a proposal submitted by a resident veterans business. For information on

obtaining a Resident Veterans Preference Certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, NM 87502-5374, telephone (505) 827-0951.

IN-STATE PREFERENCE (RESIDENT BUSINESS)

To receive a resident business preference pursuant to Section 13-4-2 NMSA 1978, an offeror shall submit with its proposal a copy of a valid resident business certificate issued by the taxation and revenue department. For a proposal submitted by a resident business with the required Resident Business Certificate, in addition to the total points on an RFP, 5% must be added for preference points.

For information on obtaining a resident business certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, New Mexico 87502-5374, telephone (505) 827-0951 or on the web at <http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx>

An offeror must specify which preference they would claim if qualifying for more than one. The preference values are not cumulative.

ATTACHMENT 1

RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans preference to this procurement:

Please check one box only

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

ATTACHMENT 2

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a Contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two (2) years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable Public Official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or un-reimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family Member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the Procurement Process” means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a Prospective Contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contributions(s): _____

Signature

Date

Title

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

ATTACHMENT 3

ACKNOWLEDGMENT OF RECEIPT FORM

RFP 2017-004

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy of acknowledged RFP.

The acknowledgement of receipt should be signed and returned to the Procurement Manager. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror written questions and the City's written responses to those questions in the form of an addenda.

COMPANY: _____

REPRESENTED BY: _____

TITLE: _____ **PHONE NO.:** _____

E-MAIL: _____ **FAX NO.:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

SIGNATURE: _____ **DATE:** _____

This name and address will be used for all correspondence related to the Request for Proposals.

Company does/does not (circle one) intend to respond to this Request for Proposals.

Acknowledgements must be delivered to the Procurement Manager at the following address:

Barbara Pyeatt
Chief Procurement Officer
Purchasing Department
2600 N Florida Ave
Alamogordo, New Mexico 88310
bpyeatt@ci.alamogordo.nm.us
Fax Number: (575) 439-4117

ATTACHMENT 4

LEASE, MAINTENANCE AND OPERATIONS AGREEMENT

THIS LEASE AGREEMENT, is made and entered into as of the date set forth in the Basic Lease Information (this lease agreement, together with all amendments and supplements hereto, this "Lease"), by and between the City of Alamogordo, a New Mexico municipal corporation, having an address at 1376 East 9th Street, Alamogordo, New Mexico 88310 (the "Landlord"), and _____, a _____, having an address at _____ (together with any successor or assign permitted by this Lease, hereinafter collectively called the "Tenant").

1. DEFINITIONS

Capitalized terms used herein shall have the following meanings for all purposes of this Lease and shall be equally applicable to both the singular and plural forms of the terms herein defined.

"Bowling Equipment" means all pin setting machines (pinsetters/pinsetters), ball returns, settees, scoring systems (including front desk systems), lanes, lane cleaning machines, bumpers, approaches, foul lights, gutters, and masking units located at the Facility, including any Site, from time to time.

"Business Days" or "Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New Mexico or is a day on which banking institutions located in such state are closed.

"Casualty" means any damage or destruction caused to the Facility by any reason, including fire.

"Claims" shall mean Liens (including lien removal and bonding costs), liabilities, obligations, damages, losses, demands, penalties, assessments, payments, fees of Mortgagee, fines, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including legal fees incurred and expenses and costs of investigation and environmental remedial action) of any kind and nature whatsoever.

"Commencement Date" shall be _____, 201____.

"Excluded Taxes" means any income or franchise taxes based upon, measured by, or calculated with respect to net income or profits (but not including any franchise tax based upon gross receipts with respect to the Rent), inheritance, estate, succession, transfer or any similar taxes.

"Improvements" means all of the buildings, structures, improvements, equipment, heating, ventilation, air conditioning, plumbing, electrical, mechanical, utility and life safety systems, cribbing, and all fixtures therein (including parking areas, and driveways) now or hereafter located on the Land, other than and specifically excluding Tenant's Personal Property and any Bowling Equipment owned by Tenant. To the extent Landlord acquires title to any Bowling Equipment, the term "Improvements" shall include such Bowling Equipment located at the Facility.

Lease Expiration Date: _____, 20____, which is the last day of the _____ full calendar month following the Commencement Date, unless extended pursuant to paragraph 4(b) of the Lease.

"Land" means the title and interest of Landlord in and to the real estate described on Exhibit A hereto, and to the extent any such real estate shall include by law, then any land lying in the bed of any existing dedicated street, road or alley adjoining thereto, all strips and gores adjoining thereto, and all rights, ways, easements, privileges and appurtenances thereunto belonging, including all of Landlord's right, title, and interest in and to all other property rights, tangible or otherwise, arising out of or connected with Landlord's ownership thereof, but none of the Improvements thereon.

"Tenant's Personal Property" means all personal property of Tenant in or on the Facility, affixed or not, which is not necessary for the operation of the Improvements, including, without limitation the following: bowling balls; bowling shoes; ball racks; pins; x-treme bowling systems; bowling tools; spare parts; bowling cleaning machines; vending and amusement game machines; billiard tables; ATM and credit card machines; copiers; computers; telephone systems; point-of-sale systems; audio and visual entertainment equipment; satellites and related equipment; alarm systems and related equipment; Tenant's trade fixtures, equipment, supplies,

consumables, and inventories, including, without limitation, tables, chairs, desks, filing cabinets, ovens, refrigerators, freezers, stoves, food preparation equipment, kitchen utensils, glassware, inventory of food, beverages, liquor, and paper goods; liquor licenses; signs; signage; advertising and marketing materials and equipment; trademarks and trade names (including, without limitation, any sign, symbol, or mark containing the name of "AMF" or Tenant's logo, each as now or hereafter existing), patents, goodwill, and related intangible property; records of confidential or proprietary information including, but not limited to, financial information, operating manuals, employee records, league records, and customer lists; and any other equipment ancillary to a Permitted Use, but specifically excluding the Bowling Equipment.

Completion Date means the first day of the first month following the earliest date upon which (i) the Facility has been substantially completed in accordance with the plans approved by the Landlord and Tenant and a certificate of occupancy issued and (ii) possession of the Facility shall have been delivered to Tenant.

FF&E means all furniture, furnishings, trade fixtures, apparatus and equipment, including without limitation maintenance vehicles and equipment, cash registers, scoreboards, interior signage, sports equipment, benches, kitchen equipment, appliances, office equipment, computers, copy machines, facsimile machines, telephone systems (not including pay telephones) and other personal property used in or held in storage for use in the operation of the Facility, other than Operating Inventory. FF&E includes both (i) fixtures and related items of furniture, furnishings and equipment to be purchased and installed by the contractor selected to construct the Facility Improvements as part of the construction contract and (ii) furniture, furnishings and equipment to be purchased by the Landlord separately from the construction contract.

Full Operating Year means any 12 month period during the Term commencing on July 1 and continuing through June 30 of the following calendar year.

Operating Inventory means consumable items used or held in storage for use in the operation of the Facility, including; retail pro shop merchandise, food and beverage inventory, kitchen supplies, paper and plastic ware, bathroom supplies, paper towels, fuel, cleaning materials, fertilizers, pesticides, seed, maintenance parts and supplies, office supplies and other similar items.

Operating Year means either a Full Operating Year or a Partial Operating Year.

Partial Operating Quarter means any calendar quarter in which the Completion Date falls on any day other than the first day of such calendar quarter.

Partial Operating Year means any calendar year in which the Completion Date falls on any day other than July 1 or any calendar year in which the Term ends on any day other than June 30.

Sound Practice means managing and operating the Facility in a manner calculated to increase Gross Revenues subject to maximizing profits, on a long-term basis and consistent with Sound Standards and safe, conservative and sound financial management and operating practices.

Sound Standards means operation and maintenance of the Facility in a manner (i) consistent with industry standards for management and operation of similar bowling complexes; (ii) using commercially reasonable efforts to maximize the safety of participants and spectators using the Facility and minimize liability to the Landlord arising from the operation and maintenance of the Facility; and (iii) intended to enhance the quality of experience for all patrons attending events at the Facility make the Facility an attractive venue to promote and book events.

2. DEMISE OF FACILITY, TENANT'S EQUIPMENT, BOWLING EQUIPMENT, LANDLORD WAIVER

2.1 Landlord hereby demises and leases to Tenant and Tenant hereby leases and rents from Landlord the Facility, IN ITS "AS IS" CONDITION, SUBJECT TO THE EXISTING STATE OF TITLE (WITHOUT EXPRESS OR IMPLIED WARRANTY OF LANDLORD WITH RESPECT TO THE CONDITION, QUALITY, REPAIR OR FITNESS OF THE FACILITY FOR A PARTICULAR USE OR TITLE THERETO, ALL SUCH WARRANTIES BEING HEREBY DISCLAIMED BY LANDLORD AND WAIVED AND RENOUNCED BY TENANT). The "Facility" consists of collectively, Landlord's interest in the Land, the Improvements, together with any easements, rights, and appurtenances in connection therewith or belonging to said Land and Improvements. The foregoing disclaimer in this paragraph has been negotiated by Landlord and Tenant, each being represented by independent counsel, and is intended as a complete negation of any representation or warranty by Landlord,

express or implied, with respect to the condition, quality, repair, or fitness of the Facility for a particular use, or title thereto.

2.2 The "Facility" includes the Land and Improvements located at _____. The Land and Improvements at all such locations collectively constitute the Facility.

2.3 Landlord does further shall lease to Tenant, and Tenant leases from Landlord, governmental liquor license # _____ for the purpose of fulfilling its contractual obligation under this Agreement for the operation of the Facility.

3. USE

3.1 Tenant shall, subject to applicable zoning restrictions and any recorded covenants or restrictions in the public records upon the Commencement Date, use and occupy the Facility only as a bowling center, with ancillary uses including dining establishments, banquet facilities, game rooms, pro shops, other ancillary entertainment uses, uses permitted pursuant to the next succeeding sentence, and other lawful purposes which are incidental thereto (including beverage service, including the sale of alcohol) (collectively, the "Permitted Use"). The foregoing restriction on use shall not apply to any minor sublease for a portion of the Facility if such sublease is supporting or ancillary to the Permitted Use. Tenant shall not use, suffer or permit the Facility, or any portion thereof, to be used by Tenant, any third party or the public, as such, without restriction or in such manner as might adversely affect Landlord's title to or interest in the Facility, or in such manner as might make possible a claim or claims of adverse possession by the public, as such, or third Persons, or of implied dedication of the Facility, or any portion thereof.

3.2 So long as no Event of Default under this Lease shall have occurred and be continuing, Tenant shall not be disturbed in its possession of the Facility by Landlord except for such access to the Facility as specifically provided for and subject to the terms and conditions of this Lease. This covenant shall be construed as a covenant running with the Facility and is not a personal covenant of Landlord. So long as no Event of Default under this Lease shall have occurred and be continuing, Landlord's use of any portion of the Facility shall not interfere, in any material respect, with any or all of (i) Tenant's rights to occupy and use the Facility (in the manner and for the purposes contemplated hereunder), (ii) Tenant's right to utilize the vehicular parking areas located on the Facility, and (iii) Tenant's right of access, ingress and egress to and from the Facility.

4. TERM

4.1 **Primary Term.** The primary term of this Lease (the "Primary Term") shall be for a period of approximately _____ (___) years, beginning on the Commencement Date and ending on the Lease Expiration Date.

4.2 **Option Term.** Provided Tenant is not in default of this Agreement, Tenant is hereby given the option(s) to extend the Primary Term of this Agreement for two separate option periods of _____ (___) years each (each, an "Extended Term") following the expiration of the Initial Term (the Initial Term and the Extended Term(s) are collectively referred to herein as the "Term"). The City shall have the right to review and approve the extension of this Agreement into the option periods, which approval shall not be unreasonably withheld or conditioned. The option periods must be exercised successively, to run from the end of the Primary Term, and shall be exercised only by giving notice of exercise of the option ("Option Notice") to City at least four months before the expiration of the Primary Term or the first Extended Term, as applicable. If Tenant, following notice and the expiration of all applicable opportunity to cure periods, is in default hereunder, it may not give an Option Notice and this Agreement shall expire at the end of the then-current Term.

5. RENT; SECURITY DEPOSIT; REVENUES; CAPITAL IMPROVEMENTS, MAINTENANCE AND REPAIRS

5.1 **Lease Amount.** Tenant shall pay the City an amount for the privilege of occupying the Facility (the "Lease Amount") according to the calculation procedure and schedule of payment set forth below:

5.1.1 **Lease Amount Calculation.** The Lease Amount shall be computed by taking the sum of: (1) _____% of the first \$ _____ of Gross Revenues for any Operating Year; (2) plus _____% of the Gross Revenues between \$ _____ and \$ _____ for any Operating Year; (3) plus _____% of the Gross Revenues in excess of \$ _____ for any Operating Year. The Lease Amount shall be reduced

by amounts attributable to the Capital Reserve Account as set forth in below; provided, however, that the Lease Amount shall not be less than \$_____ during any Full Operating Year.

5.1.2 Lease Amount Payment. The Lease Amount shall be calculated annually; however Tenant shall pay the Lease Amount to the City in quarterly estimates, with an annual reconciliation amount equal to the difference between the quarterly estimates and the actual, calculated Lease Amount. Tenant shall pay to the City quarterly in arrears with respect to each calendar quarter during the Term, an estimate of the Lease Amount due for that Operating Year based on Gross Revenues earned to date (each, an "Estimated Payment"), less prior Estimated Payments thereof. Each Estimated Payment shall be due within 45 days after the end of the quarter. Tenant shall pay to the City annually in arrears any Lease Amount due for that Operating Year less prior Estimated Payments. Each annual payment shall be due within 90 days after the end of the Operating Year. In the event this Agreement is terminated prior to the end of the Term hereof, Tenant shall pay the City, not later than 30 days after the early termination date, any portion of the Lease Amount due on the date of such early termination.

5.1.3 Additional Rent. Throughout the Term of this Lease, Tenant shall pay, as Additional Rent, all other amounts of money and charges required to be paid by Tenant under this Lease, whether or not such amounts of money or charges are designated Additional Rent. As used in this Lease, "Rent" shall mean and include the Lease Amount and Additional Rent payable by Tenant in accordance with this Lease. It is the intention of Landlord and Tenant that the Lease Amount payable by Tenant to Landlord during the entire Term of this Lease shall be absolutely net of all costs and expenses incurred in connection with the management, operation, maintenance, repair and replacement of the Facility in accordance with this Lease. Landlord shall have no obligations or liabilities whatsoever with respect to the management, operation, maintenance, repair or replacement of the Facility during the Term of this Lease, and Tenant shall manage, operate, maintain, repair and replace the Facility in accordance with this Lease and shall pay all costs and expenses incurred in connection therewith before such costs or expenses become delinquent. Without limiting the generality of the foregoing, throughout the entire term of this Lease, Tenant shall pay, as Additional Rent, all premiums for all property and liability insurance covering the Facility required under this Lease, all Property Taxes and all Other Taxes that accrue during or are allocable to the Term of this Lease, and for Property Taxes and Other Taxes, allocable for any period of time prior to the Term of this Lease.

5.1.4 Liquidated Damages. If Tenant fails to operate the Facility or breaches the terms of this Agreement at any time prior to the natural expiration of the Agreement, Tenant hereby agrees that, upon its default hereunder and expiration of the cure period set forth below, it shall pay the City, as liquidated damages, within 30 days of receipt of the City's written demand therefore, 100% of the amount that would have been due to the City as Lease Amount according to the calculation set forth above as of the date of the City's written demand.

5.1.5 Security Deposit

5.1.5.1 Concurrently with the execution of this Lease, Tenant shall deliver and maintain the Security Deposit Amount (in effect from time to time) to Landlord as a security deposit ("Security Deposit") in cash or other immediately available funds or in the form of an irrevocable standby letter of credit, in either case meeting the requirements of this paragraph 5.1.5, to secure the full and faithful performance of Tenant's obligations under this Lease. If there is an Event of Default at any time during the Term or any holdover period and for so long as an Event of Default shall continue, Landlord shall have the right, but not the obligation, in accordance with the terms of such letter of credit and this Lease, from time to time to draw upon all or any part of the Security Deposit but only in such amounts as are necessary to cure or partially cure the Event of Default which can be cured or partially cured with the payment of money, or to pay itself any Rent then due, damages or other amounts that Landlord would be entitled to recover under this Lease and which are currently due from Tenant on account of the Event of Default. If Landlord draws upon such Security Deposit, Landlord shall apply such proceeds to such amounts otherwise due from Tenant as set forth above. If Landlord shall so draw on the Security Deposit and apply all of such proceeds so drawn as set forth above, upon Landlord's demand, Tenant shall, within five (5) Business Days following written notice, restore the Security Deposit to its previous amount and any failure to do so shall be an Event of Default without further notice. Tenant may not use the Security Deposit to pay Rent or otherwise cause Landlord to offset any amounts payable by Tenant against the Security Deposit (except as provided herein). The Security Deposit shall be returned to Tenant within fifteen (15) Business Days after the expiration or earlier termination of the Term and Tenant's surrender of the Facility to Landlord as required by this Lease, less such amounts as may have been used to cure or partially cure any Events of Default by Tenant. Tenant's failure to deposit, maintain

and replenish the Security Deposit as required by this Lease shall constitute an immediate Event of Default under this Lease.

5.1.5.2 If Tenant desires to make the Security Deposit in cash or other immediately available funds, the Security Deposit may be commingled with Landlord's other funds, and no interest will be paid on it.

5.1.5.3 If Tenant desires to make the Security Deposit by delivering an irrevocable standby letter of credit to Landlord, such letter of credit shall meet all of the following requirements: (a) it is a sight draft letter of credit from a financial institution (the "Issuer") acceptable to Landlord, in its absolute discretion; (b) it has a face amount of not less than the Security Deposit Amount; (c) it has an expiration date of not less than one (1) year from the date such letter of credit is delivered to Landlord and thereafter renewed annually throughout the Term of the Lease at least thirty (30) calendar days prior to the expiration date; (d) it may be drawn upon by Landlord to cure Events of Default by Tenant under this Lease, but only in accordance with its terms and the terms of this Lease; (e) it is otherwise reasonably satisfactory to Landlord (a letter of credit satisfying the foregoing requirements is herein called a "Letter of Credit").

5.1.5.4 Tenant hereby grants Landlord a security interest in the Security Deposit as it exists from time to time, and all proceeds and products thereof. Landlord and Tenant acknowledge that as of the date of this Lease, Landlord's possession of the Security Deposit would not require further documents, instruments or financing statements to provide Landlord with a first-priority perfected security interest in the Security Deposit.

5.1.5.5 If (i) a transferee of Landlord's right, title, and interest in and to the Facility, this Lease, and such Security Deposit (a "Transferee") shall have assumed in writing Landlord's obligations hereunder and recognized Tenant in writing, as tenant under this Lease; (ii) Landlord, or such Transferee, shall have delivered written evidence of such Transferee's assumption and recognition as aforesaid; and (iii) Landlord shall have delivered the cash Security Deposit and/or the Letter of Credit, as applicable, to any such Transferee of Landlord's right, title, and interest as aforesaid (or a credit therefor shall have been given to such Transferee), the then-current landlord delivering such Security Deposit to such Transferee (or crediting such Transferee as aforesaid) shall be discharged from further liability therefor; provided, however, if the immediately preceding conditions (i), (ii), and (iii) are not satisfied, Tenant shall have no obligations hereunder to such Transferee solely with respect to the Security Deposit (including any replenishment, replacement, or transfer obligations) unless and until such conditions shall have been satisfied and the then-current landlord shall have delivered the Security Deposit to such Transferee.

5.2 Gross Revenues.

5.2.1. **Operating Account.** Prior to the Commencement Date, Tenant shall establish an interest bearing account with a financial institution of its choice (the "Operating Account") to be used in the operation of the Facility. All Gross Revenues from the operations of the Facility shall be paid into the Operating Account and all Facility Expenses as defined below

shall be paid from the Operating Account. Tenant shall own the Operating Account, shall have check writing authority with respect to it and shall be entitled to all interest accruing on it. Funds in the Operating Account in excess of those necessary to pay for Facility Expenses, to pay fees and to provide adequate cash reserves may be withdrawn by Tenant.

5.2.2. **Gross Revenues Defined.** "Gross Revenues" means and includes all receipts and revenues received by Tenant or any Affiliate relating to or derived from the Facility, in whatever form, unless such item of revenue is specifically excepted or excluded below.

5.2.2.1. "Gross Revenues" expressly include all of the following:

(a) Each line item set forth under the heading "Revenues" as shown on Exhibit B.

(b) Commissions, fees or profit shares received by Tenant (or any Affiliate) from revenues generated from sales by concessionaires at the Facility where the gross revenues from such sales are not received by or payable to Tenant or any Affiliate, including, for example, vending machine commissions, ATM commissions, etc.

(c) All finance charges to customers, in case of sales on credit, whether or not payment is actually made, at, in, on or from the Facility.

(d) Revenues from the sale of gift certificates, when such revenues are received.

(e) All service fees or other consideration paid to Tenant as compensation for Tenant's sale or distribution of any item approved by the City to be sold or distributed at the Facility.

(f) All charges for services, alterations or repairs made at, in, on or from the Facility.

(g) The proceeds of business interruption insurance, if applicable, received by Tenant with respect to the Facility.

(h) Lease, license or rent payments or other compensation from any lessee or tenant of all or part of the Facility (including, without limitation, compensation for interior signage), unless the revenues derived by such lessee's or tenant's operations from the Facility have already been included in the calculation of Gross Revenues.

5.2.2.2 Gross Revenues shall exclude (or be reduced by, as the case may be) all of the following:

(a) The amount of all sales or gross receipts tax required to be accounted for by Tenant and paid to any government or governmental agency, but not the amount of any excise tax (except a consumer excise tax) or other governmental obligation in the nature of a tax on the privilege of doing business.

(b) The amount of any sales initially included in Gross Revenues that are subsequently subject to refund or credit.

(c) The amount of any revenues received by any licensee, contractor or concessionaire (unless such licensee, contractor or concessionaire is an Affiliate) operating in or from the Facility which are not paid or required to be paid to Tenant.

(d) The amount of any revenues received by non-Affiliate special, corporate or group business events or tournament promoters, impresarios, outside catering companies or similar third party independent contractors (including revenues derived from the sale of food, beverages or liquor) involved in the promotion or conduct of special, corporate or group business events or tournaments, which revenues are not paid or required to be paid to Tenant; provided, however that any fees paid to Tenant by such group for use of the Facility shall be included in Gross Revenues.

(e) The amount of sponsorship or advertising revenues generated from the Facility which are received by Tenant from sponsors or advertisers but are paid to advertising agencies or brokers as commissions.

(f) Gratuities paid or given by customers to employees of Tenant or food and beverage service charges billed to group business clients.

(g) Proceeds of insurance other than business interruption insurance applicable to the Facility.

(h) Loan proceeds, if any.

(i) Credits or refunds received from vendors or other third Parties as a result of damage claims made by Tenant with respect to defective goods or services previously purchased.

(j) Checks or other instruments returned for insufficient funds.

(k) Late charges or interest assessed and received on delinquent accounts receivable, and merchant card fees paid by Tenant.

5.3. **Net Profit and Facility Expenses.** Subject to payment of all amounts due City under this Agreement and to the payment of Facility Expenses, Tenant shall be entitled to all income, revenues and profits from the Facility during the Term. After the Commencement Date, Tenant shall bear and pay all of the following ("Facility Expenses"): all routine and ordinary maintenance and repairs to the Facility required to preserve it in good working repair during their projected useful life, including (A) any costs incurred by or imposed on Tenant in the performance of its obligations under this Agreement, (B) all fees payable to City under this Agreement, and (C) any cost expressly identified as a Facility Expense in this Agreement, but expressly

excluding (1) any cost allocated to the City under this Agreement and (2) any financing cost incurred by the City.

5.4. **Financials**

5.4.1 **Sales Recording and Records**. Tenant shall record at the time of sale, in the presence of the customer, receipts from sales or other transactions, whether cash or credit, in a cash register or registers, or a point of sale terminal or terminals, having a tape that accumulates and consecutively numbers all transactions. A receipt from any transaction showing the correct amount of purchase shall be offered to the customer at the time of any transaction, including any cash sale. Transactions not ordinarily recorded in a cash register or point of sale terminal shall be noted on and kept in a ledger format. The Annual P&L Statement and the Balance Sheet to be furnished to the City as provided herein shall be prepared in accordance with generally accepted accounting principles (either cash or accrual basis). Tenant shall keep all of the following for the purpose of audit by the City:

- (a) Full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits of Gross Revenues.
- (b) All cash register or point of sale terminal receipts with regard to the Gross Revenues, credits, refunds and other pertinent transactions made from or on the Facility.
- (c) Detailed original records of any exclusions or deductions from Gross Revenues.

5.4.2 **Quarterly and Annual P&L Statements and Balance Sheets**.

(a) **Quarterly Financial Reports**. Within 45 days after the end of each calendar quarter during the Term, commencing with respect to the first calendar quarter of the first Full Operating Year, Tenant shall furnish the City with a Quarterly P&L Statement and a Quarterly Balance Sheet certified as correct by an authorized member or officer of Tenant.

(b) **Annual Financial Reports**. Within 90 days following the end of each Operating Year commencing with respect to the first Full Operating Year, Tenant shall furnish the City with an Annual P&L Statement and an Annual Balance Sheet certified as correct by an authorized member or officer of Tenant.

(c) **Form and Content**. Each Quarterly P&L Statement and Annual P&L Statement shall be in the form of the financial statement attached as Exhibit C. The Parties may change the form of the P&L Statements from time to time by mutual agreement. The P&L Statements and the Balance Sheets shall be prepared on a cash or accrual basis, as determined by Tenant, provided the method chosen for a particular Operating Year shall be consistently used throughout such Operating Year and subject to the requirements of Section 5.4 with respect to the Annual P&L Statement and the Balance Sheet.

5.4.3 **Audit and Examination Rights**.

(a) **Audit Procedures**. The City shall be entitled at any time and from time to time during the Term, until three years after the end of the Operating Year for which any Annual P&L Statement relates, to question the sufficiency or accuracy of the Gross Revenues and Operating Fee calculations. At any time during the Term and within one year after the end of the Term, the City may cause an audit or examination of Tenant's Gross Revenues and Operating Fee calculations by City employees or an independent accountant of the City's own selection for the three most recently ended Operating Years. If Gross Revenues for such Operating Year(s) delivered by Tenant to the City are found to be less than the amount of Tenant's actual Gross Revenues, Tenant shall immediately pay to the City earned but unpaid payments of Operating Fees due to the City. If the audit reveals an understatement of Gross Revenues for such Operating Year(s) by more than 5%, Tenant shall immediately pay to the City the reasonable cost of the audit. Otherwise, the cost of the audit shall be paid by the City. If, ten days after written request therefor, Tenant fails to provide to the City any Quarterly P&L Statement or Annual P&L Statement in the manner specified in this Agreement, this failure shall constitute a default under this Agreement. In such an event, the City shall have the right in addition to any other rights or remedies it may have under this Agreement, to conduct an audit to

enable the City independently to determine the Gross Revenues for the Facility. Tenant shall reimburse the City for the cost of such audit within ten days of written demand by the City.

(b) Examination of Books. Tenant shall, for a period of seven years following the delivery of each Annual P&L Statement, including the seven year period following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required under this Section, and shall from time to time, upon request, make these records available to the City, the City's auditor, representative or agent for examination at any reasonable time on five days advance written notice. Tenant's books and records shall be made available for inspection by the City or its representative at the Facility. The City shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, leases, licenses and concession agreements. In addition, on request of the City or the City's representatives, Tenant shall furnish copies of Tenant's state and local gross receipts tax returns.

(c) City Staff Inspections. Tenant hereby waives, for the term of this Agreement any rights it may have to keep confidential any records indicating the amount of sales generated by at or related to the Facility. Tenant further agrees to (a) take all steps necessary and to execute any required documents to permit the City's authorized representative to examine any such records and (b) require, as part of any contract or agreement between Tenant and any person, firm or entity operating any business related to the Facility (the "Facility Occupants"), that such Facility Occupants agree to waive, for the term of this Agreement, any rights it may have to keep confidential any records indicating the amount of taxable activity relating to the Facility. City staff shall have the right, from time to time to visit and inspect the operations of the Facility to confirm compliance with this Agreement.

5.5 Capital Improvements, Repairs and Maintenance.

5.5.1 Capital Reserve Account. Commencing on the Commencement Date and continuing thereafter on each anniversary thereof until the Lease Expiration Date, Tenant shall deposit the lesser of (i) XXXXXXXX Dollars (\$XXXXXXX) or (ii) ___% of the Gross Revenues for the previous operating year into a separate interest bearing account established solely for the purpose of holding funds for use in making Capital Repairs or Improvements (the "Capital Reserve Account"). All interest shall be added to the Capital Reserve Account. Notwithstanding anything to the contrary contained herein, Tenant's maintenance, repair and replacement obligations under this Lease shall in no way be limited by the amount of funds from time to time held in the Capital Reserve Account.

5.5.2 Repairs and Maintenance. A Minor Repair or Replacement" means any maintenance and repair expense that individually is less than \$20,000. All such maintenance or repair expenses shall be a Facility Expense. A Capital Improvement means any repair or improvement that is individually in excess of \$20,000. All Capital Improvements projects shall require the City's prior authorization and, to the extent funds are available, are to be paid out of the Capital Reserve Account. At all times on and after the Commencement Date, to and including the date of the termination of the Term, by lapse of time or otherwise, the Tenant shall maintain the Facility in good repair and condition and in conformity with all requirements and shall make or cause to be made all Minor Repairs and Replacements. In making any such repairs, all work done by the Tenant, or on its account, shall be of first class quality in both materials and workmanship. In the event that the Tenant refuses or neglects to make any repairs required by this Agreement, or if Landlord is required to make any repairs necessitated by the negligent acts or omissions of the Tenant, its employees, agents, servants, or licensees, Landlord shall have the right, but shall not be obligated, to make such repairs on behalf of or for the account of the Tenant upon prior written notice to Tenant. In the event that Landlord shall make such repairs, such work shall be paid for by the Tenant upon receipt of a statement therefore in the amount of Landlord's costs plus an amount for overhead as shall be determined from time to time by Landlord or by offset to amounts owed by Landlord to the Tenant. Nothing herein contained shall prevent Landlord from determining that the failure of the Tenant to comply with the terms of this provision constitutes a material breach of this Agreement permitting Landlord to terminate this Agreement. Any amount unpaid shall accrue interest at the then existing Prime Rate plus five percent (5%) from the date incurred.

5.5.3 Capital Improvements. Prior to January 1st of each Operating Year, Tenant shall submit a

written request to the City Manager or authorized designee, in writing, of any Capital Improvement projects to be included in the City's annual capital improvement projects budget. The cost of all City-approved Major Improvements shall be charged against the Capital Reserve Account. In the event that the cost of a Capital Improvement project exceeds the amount in the Capital Reserve Account, the shortfall shall be paid by the Landlord. Upon the expiration of the Term of this Lease, or in the event of the early termination of this Lease by any party for any reason or cause whatsoever, and without regard to whether or not the Landlord is then in default hereunder, all amounts then on deposit in the Capital Reserve Account shall be paid over by the Tenant to the Landlord.

6. TAXES

6.1 Tenant shall pay, as Additional Rent, all Property Taxes prior to the assessment of any interest or penalty for late payment (subject to Tenant's rights under this paragraph (a) to make payment thereof in installments or under paragraph 6(e) below to protest Property Taxes); provided, however, if and to the extent Landlord is holding Tenant's estimated payments thereof pursuant to paragraph 6.6 below, Landlord shall instead make such payments timely upon Tenant's behalf; provided, further, if any such Property Taxes may legally be paid in installments, Tenant may, at its option, pay such Property Taxes in such installments together with any interest due thereon, provided that Tenant shall have paid all such installments, or provided to Landlord such amounts as are necessary for the payment of, all such installments prior to the expiration or earlier termination of this Lease. "Property Taxes" shall mean all taxes, assessments, excises, levies, fees and charges (and any tax, assessment, excise, levy, municipal service fee, fee or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority on or against, or otherwise with respect to, the Facility or any part thereof or any personal property used in connection with the Facility. Property Taxes shall not include any Other Taxes or Excluded Taxes arising out of or levied in connection with this Lease, unless and only to the extent levied or assessed against Landlord as a substitute for any Property Taxes.

6.2 Tenant shall pay, as Additional Rent, all Other Taxes prior to the assessment of any interest or penalty for late payment (subject to Tenant's rights under this paragraph 6.2 and paragraph 6.5 below to make payment in installments or to protest Other Taxes); provided, however, if Landlord is holding Tenant's estimated payments thereof pursuant to paragraph 6.6 below, Landlord shall instead make such payments timely upon Tenant's behalf; provided, further, if any such Other Taxes may legally be paid in installments, Tenant may, at its option, pay such Other Taxes in such installments together with any interest due thereon provided that Tenant shall have paid, or provided to Landlord such amounts as are necessary for the payment of, all such installments prior to the expiration or earlier termination of this Lease. "Other Taxes" shall mean all taxes, assessments, excises, levies, fees and charges, including all payments related to the cost or occupation of providing facilities or services, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority upon, or measured by, or reasonably attributable to (i) the Facility, (ii) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Facility or the cost or value of any leasehold improvements made in or to the Facility by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord, (iii) any Rent payable under this Lease, including any gross receipts tax or excise tax levied by any public or government authority with respect to the receipt of any such Rent but only to the extent that such taxes are in lieu of or a substitute for any Property Taxes, (iv) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Facility, or (v) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Facility. "Other Taxes" shall not include any Property Taxes or any Excluded Taxes arising out of or levied in connection with this Lease, in each case, of Landlord, unless and only to the extent levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any Other Taxes.

6.3 Except for any Excluded Taxes imposed on or with respect to the Rent, if at any time during the Term, any method of taxation shall be such that there shall be levied, assessed or imposed on Landlord, or on the Rent, or on the Facility, or any portion thereof, a capital levy, gross receipts tax on the Rent, occupational license tax, or a franchise tax based upon gross receipts with respect to the Rent, but not including any income or franchise taxes based upon, measured by, or calculated with respect to net income or profits, Tenant, to the extent permitted by

law, covenants to pay and discharge the same, it being the intention of the parties hereto that the Lease Amount to be paid hereunder shall be paid to Landlord absolutely net without deduction or charge of any nature whatsoever, foreseeable or unforeseeable, ordinary or extraordinary, or of any nature, kind, or description, except for Excluded Taxes and as otherwise expressly provided in this Lease.

6.4 Tenant covenants to furnish Landlord, within fifteen (15) calendar days after request by Landlord, official receipts of the appropriate taxing authority, if any, or other appropriate proof reasonably satisfactory to Landlord, evidencing the payment of all Impositions.

6.5 Tenant shall have the right to contest the amount or validity, in whole or in part, of any Property Tax or Other Tax or to seek a reduction in the valuation of the Facility as assessed for real estate property tax purposes by appropriate proceedings diligently conducted in good faith (but only after the deposit or payments (whether under protest or otherwise) of any amounts required by applicable law to stay or prevent collection activities). Landlord shall not be required to join in any proceeding referred to in this subparagraph (e) except to the extent required by law, in which event Landlord shall, upon written request by Tenant, join in such proceedings or permit the same to be brought in its name, all at Tenant's expense. Landlord agrees to provide, at Tenant's expense, whatever assistance Tenant may reasonably require in connection with any such contest. Tenant covenants that Landlord shall not suffer or sustain any costs or expenses (including counsel fees) or any liability in connection with any such proceeding. No such consent shall subject Landlord to any civil liability or the risk of any criminal liability or forfeiture.

6.6 During the continuance of any Event of Default or as required by a Mortgagee, Tenant shall pay to Landlord on the first day of each calendar month an amount equal to one twelfth (1/12) of the Property Taxes and Other Taxes thereafter due and payable, as reasonably estimated by Landlord on the basis of assessments and bills and estimates thereof. Such amounts shall be held by Landlord, without interest and may be commingled with Landlord's other funds. Landlord shall apply such amounts paid by Tenant under this paragraph 6.6 (including any amounts tendered by Tenant which are intended for interest if Tenant shall have elected to make such payments in installments) to the payment before delinquency of the Property Taxes and Other Taxes. Landlord shall make no charge for holding and applying such amounts. If at any time the amount on deposit pursuant to this paragraph 6.6 shall be less than the amount reasonably deemed necessary by Landlord to pay such Property Taxes or Other Taxes as they become due, Tenant shall pay to Landlord the amount necessary to make the deficiency within five (5) Business Days after notice from Landlord requesting payment thereof.

6.7 Landlord will, within thirty (30) calendar days after receipt, reimburse Tenant for any refund of Property Tax or Other Tax received by Landlord or Mortgagee as a result of any tax contest relating to the Term, which obligation shall survive the expiration or earlier termination of the Term of this Lease.

7. NET LEASE; NON-TERMINABILITY

7.1 This is an absolutely net lease and the Lease Amount, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice (except as expressly provided herein), demand, set-off, counterclaim, abatement, suspension, deduction or defense. It is the intention of the parties hereto that the Lease Amount shall be an absolutely net return to Landlord throughout the Term of this Lease. In order that such Rent shall be absolutely net to Landlord, Tenant shall pay when due, and save Landlord harmless from and against, any and all costs, charges and expenses attributable to the Facility, including each fine, fee, penalty, charge (including governmental charges), assessments, sewer rent, Impositions, insurance premiums as may be required under this Lease, utility expenses, costs, expenses and obligations of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, the payment for which Landlord or Tenant is, or shall become liable by reason of any rights or interest of Landlord or Tenant in, to or under the Facility or this Lease or in any manner relating to the ownership, leasing, operation, management, maintenance, repair, rebuilding, use or occupation of the Facility, or of any portion thereof; provided, however, that nothing herein contained shall be construed as imposing upon Tenant any obligation to pay any Excluded Taxes of Landlord arising out of, or levied in connection with, this Lease or Landlord's right or interest in the Facility or the Rent.

7.2 This Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, except as expressly provided in paragraph 13 nor shall Tenant be entitled to any abatement or reduction of Rent hereunder except as required by paragraph 13 nor shall the obligations of Tenant under this Lease be affected, by reason of (i) any damage to or destruction of all or any part of the Facility from whatever cause; (ii) subject to paragraph 13,

the taking of the Facility or any portion thereof by condemnation, requisition or eminent domain proceedings; (iii) the prohibition, limitation or restriction of Tenant's use of all or any part of the Facility, or any interference with such use; (iv) any eviction by paramount title or otherwise; (v) Tenant's acquisition or ownership of all or any part of the Facility otherwise than as expressly provided herein; (vi) any default on the part of Landlord under this Lease, or under any other agreement to which Landlord and Tenant may be parties; or (vii) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Lease Amount, the Additional Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to any express provision of this Lease. Tenant agrees that Tenant will not be relieved of the obligations to pay the Lease Amount or any Additional Rent in case of damage to or destruction of or condemnation of the Facility.

7.3 Tenant agrees that it will remain obligated under this Lease in accordance with its terms, and that it will not take any action to terminate, rescind or void this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up or other proceeding affecting Landlord or its successor in interest, or (ii) any action with respect to this Lease which may be taken by any trustee or receiver of Landlord or its successor in interest or by any court in any such proceeding.

7.4 Tenant waives all rights which may now or hereafter be conferred by law (i) to quit, terminate or surrender this Lease or the Facility or any part thereof, except as otherwise expressly provided herein or (ii) to any abatement, suspension, deferment or reduction of the Lease Amount, Additional Rent or any other sums payable under this Lease, except as otherwise expressly provided herein.

8. SERVICES

8.1 Commencing upon the Commencement Date and continuing through the Term, Landlord grants to Tenant the exclusive right to occupy, maintain and operate the Facility pursuant to this Agreement, and Tenant covenants and agrees to maintain and operate the Facility according to Sound Standards and Sound Practice and pursuant to the terms and conditions set forth in this Agreement.

8.2 Tenant shall during the Term, at Tenant's sole cost and expense, be responsible for supplying the Facility with electricity, heating, ventilating and air conditioning, water, natural gas, lighting, replacement for all lights, restroom supplies, telephone service, window washing, security service, janitor, pest control and disposal services (including, if applicable, hazardous and biological waste disposal), and such other services as Tenant determines to furnish to the Facility. Landlord shall not be in default hereunder or be liable for any damage or loss directly or indirectly resulting from, nor shall the Lease Amount or Additional Rent be abated or a constructive or other eviction be deemed to have occurred by reason of, the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, any failure to furnish or delay in furnishing any such services, whether such failure or delay is caused by accident or any condition beyond the control of Landlord or Tenant or by the making of repairs or improvements to the Facility, or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any form of energy serving the Facility, whether such results from mandatory governmental restriction or voluntary compliance with governmental guidelines. Tenant shall pay the full cost of all of the foregoing services and all other utilities and services supplied to the Facility as Additional Rent.

8.3 Operation Services. Tenant shall have the right and responsibility to: (i) determine, establish, and implement the policies, standards, fees and schedules for the operation and maintenance of the Facility and all matters affecting customer relations; (ii) hire, train, and supervise all Facility employees; (iii) supervise and direct advertising, sales and business promotion; and (iv) establish accounting and payroll procedures and functions. Without in any way limiting Tenant's right and responsibility to operate the Facility in accordance with the terms of this Agreement, Tenant shall perform the following operations and maintenance services, or cause the same to be performed for the Facility. Unless specifically set forth otherwise in this Agreement, all expenditures of Tenant and costs and expenses incurred by Tenant in performing these services shall be Facility Expenses:

8.3.1. League, tournament, open and private bowling activities to be offered at the Facility.

8.3.2. Consummate arrangements with concessionaires, licensees, tournament promoters, contractors or other intended users of the Facility.

8.3.3. Enter contracts for the furnishing of utilities and maintenance and other services to the Facility.

8.3.4. Incur such expenses as shall reasonably be determined to be necessary for the proper operation of the Facility, including without limitation rental expenses for leased FF&E as necessary.

8.3.5. Maintain a level of Operating Inventory deemed appropriate by Tenant for supplying the needs of the Facility and its customers.

8.3.6. Use commercially reasonable efforts to do, or cause to be done, all such acts in and about the Facility as shall be reasonably necessary to comply with all requirements of each insurance policy applicable to the Facility (the "Insurance Requirements").

8.3.7. Use commercially reasonable efforts to market the Facility and maximize Gross Revenues, consistent with Sound Practice.

8.3.8. Purchase additional FF&E as necessary to operate and maintain the Facility in a first class manner.

8.3.9. Pay initial activation charges or connection fees for utilities and services for the Facility.

8.3.10. Prepare annually, on or before the end of each calendar year, an operations budget forecasting Gross Revenues, the Lease Amount and Facility Expenses for the next Operating Year. Tenant shall deliver a copy of the complete operations budget for the then-current calendar year to the Landlord not later than January 31 of each such year.

8.3.11. Not permit any mechanic's or materialmen's liens to be asserted against the Facility for work or materials by or on behalf of Tenant.

8.3.12. Conduct business in the Facility under the name "_____".

8.3.13. Comply with all applicable laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to Tenant, the Facility or the operation of the Facility (the "Legal Requirements").

8.4 Maintenance and Repair. Tenant shall furnish, maintain and repair the Facility to keep it in first class condition and in good repair (damage by casualty or condemnation and reasonable wear and tear excepted) throughout its useful life.

8.4.1 General Maintenance, Repair and Upkeep. Tenant shall maintain the Facility in a clean, safe and attractive state, including, but not limited to the surrounding sidewalk and landscape areas, telephone and data lines, offices, rest rooms and open areas. A clean and attractive state includes replacing bulbs and ballasts in lamps and lighting fixtures; cleaning, repairing and replacing signs; maintaining fire alarm call boxes, fire extinguishers and hose boxes and systems in proper working condition; general facility maintenance and repairs by tradesmen as required to ensure a clean, attractive and safe environment such as maintenance and repairs of electrical equipment, plumbing fixtures; painting pedestrian areas, offices, rest rooms, etc., other repairs as necessary; supplying rest rooms with soap, towels, toilet paper and providing for their disposal.

8.4.2 Garbage Removal. Tenant shall arrange for the storage, removal and disposal of all waste material in connection with the Facility. Tenant shall also be responsible for all storage and disposal of all waste materials throughout the entire Facility. Tenant shall comply with all applicable ordinances, statutes and regulations for storage, removal and disposal of waste materials.

8.4.3 Pest Control. Tenant shall maintain a pest control program that minimizes the infestation of pests and vermin in accordance with all applicable ordinances, statutes and regulations.

8.4.4 Graffiti Removal. Tenant shall remove or cause to be removed all graffiti applied to surfaces of the Facility and elsewhere in and around the Facility in a manner (chemicals and process) approved by the Landlord.

8.4.5 Elevator/Escalator Maintenance and Repair. Tenant shall maintain in good working order any elevators and escalators, where existing, and promptly repair the elevators and escalators when necessary. Tenant shall keep elevators and escalators in compliance with applicable codes.

8.4.6 Maintenance and Custodial Equipment. Tenant shall keep all maintenance and custodial equipment in good repair and working order.

8.4.7 Maintenance of Electronic Security and Surveillance Equipment. Tenant shall keep all electronic security and surveillance equipment in good repair and working order.

8.4.8 Maintenance of Score Boards, Sound System and Video Boards. Tenant shall maintain the scoreboards, sound system, video boards, and video production equipment at the Facility in good repair and working order.

8.4.9 Window Washing. Tenant shall be responsible for window washing.

8.5 Personnel. Except for Landlord employees working at the Facility for the Landlord in connection with Landlord Activities, all employees working at the Facility shall be full or part time employees of Tenant or an Affiliate. The number of employees working at the Facility, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by Tenant. Tenant shall recruit, hire, train, discharge, promote and supervise the Facility staff, all of whom shall be Tenant employees and Tenant shall be solely responsible for paying all federal, state and local taxes and all benefits for all such employees. The compensation (including benefits) of the Facility staff and all other Facility employees shall be a Facility Expense.

8.6 Specific Operating Procedures. In addition to the more general responsibilities of Tenant for operations of the Facility as provided herein, Tenant shall operate the Facility in accordance with the following operating procedures:

8.6.1 Facility Operating Hours. Tenant shall operate the Facility on days and at hours consistent with Sound Practice, subject to closure due to, casualty, condemnation, Force Majeure Events or major alterations or improvements.

8.6.2 Fees and Charges. Subject only to the limitations set forth in this subsection, Tenant may charge: (1) for lane use on a per hour, day or other periodic use basis; (2) leagues a flat fee per game, or per month, season or year; and (3) a periodic membership charge to league/team members and (4) token fees. All fees, charges and prices at the Facility (including without limitation: use, admissions, token fees, services, parking, food, beverages, merchandise, advertising) shall be set by Tenant in accordance with Sound Practice but generally comparable (subject to reasonable geographical market variations) to other comparable facilities in New Mexico.

8.6.3 Scheduling Report. Tenant shall upon request, provide a scheduling report to the Landlord identifying the group(s) and team(s) utilizing the Facility.

8.6.4 Security and Crowd Control

i. Security. Tenant shall be responsible for the general safety, security and well being of all occupants of the Facility at all times, including providing and arranging for security and crowd control as reasonably necessary in connection with the Facility and events to be held therein. To the extent consistent with Sound Standards, Tenant shall provide security by means of electronic surveillance and foot patrols.

ii. Medical Staffing. To the extent consistent with Sound Standards, Tenant shall be responsible for (a) the staffing of the medical personnel and implementing appropriate medical policies as required on an event-by-event basis or (b) ensuring the access of on-call public medical services.

iii. Safety Plans. In conjunction with the Landlord, Tenant shall develop and implement (a) an emergency and evacuation plan and (b) a public safety and fire management plan for the Facility.

8.6.5 Interior Signs. Subject to compliance with applicable law, Tenant may sell or lease interior signage rights as Tenant may determine. However, Tenant agrees that it will not erect or maintain, or allow to be erected and maintained, signs within the Facility which contain copy relating to (1) alcoholic beverages (other than beer, advertising related to which is permitted on such interior signs), (2) adult entertainment facilities or content sexual in nature or (3) tobacco products. Tenant's authorization to lease or sell interior signage rights is expressly conditioned upon the prior, written approval by the City Manager or his authorized designee of any agreement to lease or sell such rights, which approval shall not be unreasonably withheld. The City Manager or authorized designee shall render a decision with respect to any agreement to lease or sell interior

signage rights within ten business days after Tenant submits the final agreement to the City Manager for review; if the City Manager or authorized designee fails to render a decision within the ten business day period, the request shall be deemed approved.

8.6.6 Landscape and Irrigation System Maintenance. Tenant shall maintain, repair and upkeep the landscape and irrigation systems surrounding the Facility and located within the Facility consistent with the Landlord's requirements.

8.6.7 Tobacco. Tenant shall not allow the sale of tobacco products, either manually or through vending machines, anywhere within the Facility.

8.6.8 Management, Operation and Maintenance Plan. At least six months prior to the projected Completion Date, Tenant shall provide the Landlord with an operation and maintenance plan including but not limited to:

- i. An organization chart showing Tenant's full-time general manager for the Facility and all full-time positions planned for the operations at the Facility denoting anticipated annual salary for each Senior Staff position.
- ii. The experience, education and performance record in the facilities management business of the general manager and assistant manager, including the names, resumes and references of the general manager and assistant manager.
- iii. A repair, maintenance and cleaning plan for all of the facilities in the Facility. The repair, maintenance and cleaning plan should include a definition of the frequency (time interval) and the various repair, maintenance and cleaning functions, including refuse and waste disposal and a plan for capital repairs necessary for depreciated or obsolete items.
- iv. An energy management and conservation program for the management, operation and maintenance at the Facility.
- v. The preliminary plan for marketing events at the Facility.
- vi. Any other information that the Landlord requests or Tenant feels is pertinent to the success of the management, operation and maintenance of the Facility.

8.7 **Contracts and Agreements**. All leases and financing agreements for additional FF&E beyond those initially provided by Landlord, and all contracts and agreements relating to the operation and maintenance of the Facility (including without limitation contracts for maintenance and repair services, pest control, supplies and landscaping services, and agreements for tournaments, banquets and other group functions), entered during the Term shall be entered by Tenant as the contracting party. Tenant shall not enter any contract or agreement which extends beyond the Term of this Agreement unless such contract or agreement is cancelable on 30 days' notice.

8.8 **Compliance with Environmental Laws**. Subsequent to the Commencement Date, Tenant shall comply with all federal, state and local laws and regulations pertaining to the storage, use and disposal of "Hazardous Materials", meaning any material, substance or matter which is flammable, explosive, corrosive, radioactive or toxic, or which contains asbestos, or is a pesticide, or is a chemical known to cause cancer or reproductive toxicity or which is defined as a hazardous substance, material or waste, or as a toxic substance, material or waste, in any federal, State of New Mexico or applicable local law, regulation or order. All expenditures of Tenant and costs and expenses incurred by Tenant in performing the foregoing services or in remediating damage to the Property resulting from the storage, use or disposal of such Hazardous Materials by Tenant subsequent to the Commencement Date shall be considered Facility Expenses and shall be paid or borne solely by Tenant. Landlord shall be responsible for all costs and expenses associated with the remediation of, and liability arising from or related to, damages to the Property from the storage, use or disposal of Hazardous Materials ("Hazmat Costs"): (A) before the Completion Date; or (B) percolating under the property whether before or after the Completion Date. Tenant will be responsible for all Hazmat Costs by Tenant, its employees, agents and contractors after the Commencement Date.

8.9 Tenant shall maintain, and (to the extent in its possession) turn over to Landlord upon expiration or termination of this Lease, then current operating manuals and original warranties (to the extent assignable) for

all equipment and fixtures then located at the Facility specifically excluding, in all cases, Tenant's Personal Property at the Facility which Tenant's Personal Property may and which are subsequently removed by Tenant upon expiration or earlier termination of this Lease.

9. DESTRUCTION OF OR DAMAGE TO FACILITY

If the Facility is damaged by fire or other casualty during the Term of this Lease, Tenant shall (a) repair such damage and restore the Facility to substantially the same or better condition as existed before the occurrence of such fire or other casualty using materials of the same or better grade than that of the materials being replaced (herein, a "Casualty Repair") and (b) this Lease shall remain in full force and effect. Such repair and replacement by Tenant shall be done in accordance with the terms and the standards of this Agreement and Tenant shall, at its expense, obtain all permits required for such work. An architect or engineer selected by Landlord shall review, at Tenant's expense, all plans and specifications and all draw requests hereunder. In no event shall Lease Amount or Additional Rent abate, nor shall this Lease terminate by reason of such damage or destruction. Provided that no Event of Default by Tenant shall then exist under this Lease (and no event has occurred which, with the passage of time, the giving of notice, or both, would constitute an Event of Default), and provided Tenant has: (i) delivered to Landlord plans and specifications and a budget for such Casualty Repair (all of which Landlord shall have approved), and (ii) deposited with Landlord cash or a letter of credit meeting the requirements (other than amount) of a Letter of Credit outlined in Section 5 above, in the sum equal to the excess, if any, of the total cost set forth in such approved budget over the amount of insurance proceeds received on account of such casualty, Landlord shall make available to Tenant all insurance proceeds actually received by Landlord on account of such casualty, for application to the costs of such approved repair and restoration, as set forth below.

10. INSURANCE, HOLD HARMLESS AND INDEMNIFICATION

10.1 To the fullest extent permitted by law, Landlord shall not be liable to Tenant for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Facility arising at any time and from any cause whatsoever. Tenant waives all claims against Landlord arising from any liability described in this paragraph 10.

10.2 Tenant hereby agrees to indemnify and defend Landlord against and hold Landlord harmless from all third-party claims, demands, liabilities, damages, losses, costs and expenses, including attorneys' fees and disbursements, arising from or related to any use or occupancy of the Facility, or any condition of the Facility, or any damage to any property (including property of employees and invitees of Tenant) or any bodily or personal injury, illness or death of any person (including employees and invitees of Tenant) occurring in, on or about the Facility or any part thereof or any part of the building or the land constituting a part of the Facility arising at any time and from any cause whatsoever or occurring outside the Facility when such damage, bodily or personal injury, illness or death is proximately caused by any act or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees. This paragraph 10.2 shall survive the termination of this Lease with respect to any damage, bodily or personal injury, illness or death occurring prior to such termination.

10.3 Insurance

10.3.1 Tenant's Insurance. Tenant shall obtain, pay for and maintain at all times during the Term the following insurance on or in connection with the Facility:

(a) Insurance against all risk of physical loss or damage to the Improvements and Building Systems Equipment as provided under "Special Causes of Loss" form coverage, and including customarily excluded perils of hail, windstorm, flood coverage, earthquake and, to the extent required by Landlord, terrorism, in amounts no less than the actual replacement cost of the Improvements and Building Systems Equipment; provided that if Tenant's insurance company is unable or unwilling to include any of all of such excluded perils, Tenant shall have the option of purchasing coverage against such perils from another insurer on a "Difference in Conditions" form or through a stand-alone policy. Such policies shall contain Replacement Cost and Agreed Amount Endorsements and "Law and Ordinance" coverage (at full replacement cost).

(b) Commercial General Liability Insurance, against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Facility, in an amount not less than

\$1,000,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than \$1,000,000 per occurrence/annual aggregate.

(c) Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability), against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Facility, in an amount not less than \$250,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than \$1,000,000 per occurrence/annual aggregate.

(d) Workers' Compensation and Employers Liability Insurance as required by New Mexico Law. Tenant shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Tenant shall procure and maintain during the term of this Lease complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' Compensation Insurance, if Tenant elects to be self-insured, Tenant shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Tenant shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Tenant hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Tenant's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Tenant are not City employees for any purpose.

(e) Business Interruption Insurance at limits sufficient to cover 100% of the period of indemnity not less than twelve (12) months from time of loss, including extended period of indemnity which provides that after the physical loss to the Improvements and equipment has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs.

(f) During any period in which Capital Improvements, Capitalized Repairs, or any other substantial alterations at the Facility are being undertaken, builder's risk insurance covering the total completed value, including all hard and soft costs (which shall include business interruption coverage) with respect to the Improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction, alteration or repair of Improvements or Building Systems Equipment, together with such other endorsements as Landlord may reasonably require, and general liability, worker's compensation and automobile liability insurance with respect to the Improvements being constructed, altered or repaired.

(g) Tenant shall, at all times during the Term, maintain, at Tenant's sole cost and expense, an insurance policy naming Landlord as an additional insured covering the Landlord's Personal Assets, insuring the Landlord's Personal Assets against loss by fire and other casualty or theft, with such coverage and deductibles to be agreed to between Landlord and Tenant and consistent with insurance coverage previously maintained on the Landlord's Personal Assets (whether by Landlord or any prior owner of the Landlord's Personal Assets).

(h) Such other insurance (or other or different terms with respect to any insurance required pursuant to this Article 10.3.1, including without limitation amounts and types of coverage, deductibles, form of mortgagee clause, insurer rating) on or in connection with any of the Facility as Landlord may reasonably require; provided that such insurance is available to Tenant on a commercially reasonable basis and is consistent, as to types of coverage and amounts, with the requirements generally of prudent owners or operators of similar properties.

10.3.2 Policies of insurance shall be written by companies authorized to write such insurance in New Mexico. When requested by City, Tenant shall allow City to review in the presence of Tenant's insurance representatives any or all policies of insurance for the insurance coverage required in this Section.

10.3.3 Each policy required by any provision of Section 10.3.1 except clause (d) thereof, shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Landlord.

10.3.4 Tenant shall pay as they become due all premiums for the insurance required by Section 10.3.1, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefor or installment then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Landlord all original certificates of insurance evidencing such coverages.

10.3.5 Each policy obtained by Tenant shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Landlord and shall contain a full waiver of subrogation against the Landlord. Each policy obtained by Landlord, if any, shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Tenant and shall contain a full waiver of subrogation against Tenant. Tenant waives subrogation against Landlord to extent of insurance proceeds actually received or would have been received if adequate coverage had been in place.

10.3.6 Landlord's Right to Obtain Tenant's Insurance. Notwithstanding anything to the contrary contained in this Article 10.3.1, if at any time Tenant fails to provide evidence of the insurance required to be maintained by Tenant hereunder within ten (10) Business Days of Landlord's request for same (said requests not to be made more than once per calendar quarter), Landlord shall have the right, but not the obligation, by providing written notice of such election to Tenant, to itself obtain and maintain all or any portion of such insurance, in which event Landlord shall charge Tenant the cost of such insurance as Additional Rent hereunder. In the event that Landlord so elects to obtain and maintain such insurance, Landlord shall cause Tenant, if Tenant so requests in writing, to be added as additional insureds and loss payees under the applicable insurance policy(ies), as its interests may appear. Landlord and Tenant agree to reasonably cooperate with each other in order to coordinate the acquisition and maintenance of any such insurance by Landlord, which may include, without limitation, the execution of any required forms and applications and providing relevant information to Landlord's insurance carrier.

10.3.7 During the continuance of any Event of Default, Tenant shall pay to Landlord on the first day of each calendar month an amount equal to one twelfth (1/12) of the premiums for property and casualty insurance required by this paragraph 10, as reasonably estimated by Landlord on the basis of bills and estimates thereof. If such premium payments shall have been made by Tenant, such amounts shall be held by Landlord, without interest, and shall not be deemed to be trust funds and may be commingled with the general funds of Landlord. Landlord shall apply such amounts to the payment of the insurance premiums with respect to which such amounts were paid. Landlord shall make no charge for holding and applying such amounts. If at any time the amount on deposit pursuant to this paragraph shall be less than the amount deemed necessary by Landlord to pay such premiums as they become due, Tenant shall pay to Landlord the amount necessary to make the deficiency within five (5) calendar days after notice from Landlord requesting payment thereof. Upon the expiration or termination of the term of this Lease (other than as a result of an Event of Default), Landlord shall promptly refund to Tenant any amount held by Landlord pursuant to this paragraph.

11. COMPLIANCE WITH LAWS, COVENANTS

11.1 Tenant shall with respect to the Facility and Bowling Equipment throughout the Term promptly comply or cause compliance with or remove or cure any violation of any and all present and future laws including the Americans with Disabilities Act of 1990 as the same may be amended from time to time ("ADA") (Landlord acknowledges that Tenant shall only be required to make accommodations under the ADA to the extent required by the ADA), ordinances (zoning or otherwise), orders, rules, regulations and requirements of all Federal, State, municipal and other governmental bodies having jurisdiction over the Facility and the appropriate departments, commissions, boards and officers thereof, or any other body now or hereafter constituted exercising lawful or valid authority over the Facility (collectively, "Legal Requirements"), or any portion thereof, and whether the compliance, curing or removal of any such violation and the costs and expenses necessitated thereby shall have been foreseen or unforeseen, ordinary or extraordinary, and whether or not the same shall be presently within the contemplation of Landlord or Tenant or shall involve any change in governmental policy, or require structural or extraordinary repairs, alterations or additions by Tenant and irrespective of the amount of the costs thereof.

11.2 In connection with its operations or other activities at the Facility, Tenant shall at all times and in all respects comply with all Environmental Laws included Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Facility and Tenant's activities. Upon expiration or earlier termination of this Lease, Tenant shall cause all Hazardous Substances introduced to the Facility by Tenant or its agents or invitees to be removed from the Facility as required by and in compliance with applicable environmental laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws. "Environmental Laws" means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§6901, et seq. (RCRA), as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq. (CERCLA), as amended, the Toxic Substance Control Act, as amended, 15 U.S.C. §§2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§136 et seq., and all applicable federal, state and local environmental laws, ordinances, rules and regulations, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted, and any other federal, state or local laws, ordinances, rules and regulations, now or hereafter existing relating to regulations or control of Hazardous Material or materials. The term "Hazardous Materials" as used in this Lease shall mean substances defined as "hazardous substances", "hazardous materials", "hazardous wastes" or "toxic substances" in any applicable federal, state or local statute, rule, regulation or determination, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§1801, et seq.; the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. §§6901, et seq.; and, asbestos, pcb's, radioactive substances, methane, volatile hydrocarbons, petroleum or petroleum-derived substances or wastes, radon, industrial solvents or any other material as may be specified in applicable law or regulations.

12. PARTIAL TAKING

If less than substantially all of any Site shall be taken for public or quasi-public purposes, Tenant will promptly, at its sole cost and expense, restore, repair, replace or rebuild the improvements so taken in conformity with the requirements of this agreement as nearly as practicable to the condition, size, quality of workmanship and market value thereof immediately prior to such taking, without regard to the adequacy of any condemnation award for such purpose. There shall be no abatement of Rent during such period of restoration. In performing its obligations, Tenant shall be entitled to all condemnation proceeds available to Landlord for restoration or repair of the Facility under the same terms and conditions for disbursement set forth for casualty proceeds. Tenant shall, at its sole cost and expense, negotiate and, if necessary, litigate, the amount of the award, and Landlord shall have the right to participate in such process, at its sole cost and expense (it being acknowledged and agreed by Landlord that Tenant shall have the right to control such proceeds and settle all awards), and if Tenant fails to diligently prosecute such efforts, Landlord may take control of the process. Any condemnation proceeds in excess of the amounts used or requested as are made by Tenant for restoration or repair of the Facility, shall be the sole and exclusive property of Landlord. Tenant shall have the right to control all condemnation proceedings on Landlord's behalf, and shall also be entitled to receive any award made by the condemning authority in respect of business loss or, if available, business relocation and any other claim permitted by law which does not, in any such case, diminish Landlord's recovery.

13. SUBSTANTIAL TAKING

In the event the whole of the Facility shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition, expropriation, or like proceeding (including transfers in lieu thereof) by any competent authority for any public or quasi-public use or purpose, or in the event such a portion thereof shall be taken or condemned (or transferred in lieu thereof) as to make it imprudent or unreasonable to use the remaining portion of the Facility for the permitted uses of the type and class immediately preceding such taking or condemnation (or transfer in lieu thereof) then, in any of such events, this Lease shall terminate as of the date of the taking and Tenant shall not be entitled to participate in any award or compensation received for such a taking or condemnation and the parties hereto shall have no further liability to the other hereunder.

14. DEFAULT: EVENTS OF DEFAULT

14.1 The occurrence of any one or more of the following events ("Event of Default") shall constitute a breach of this Lease by Tenant:

14.1.1 Tenant fails to pay any Lease Amount as and when such Lease Amount becomes due, and such failure continues for five (5) calendar days after written notice thereof, provided that if Tenant is more than five (5) calendar days late in the payment of Lease Amount once in any twelve (12) consecutive month period, only one notice need be given by Landlord during such 12 month period and any subsequent failure to pay Lease Amount on or before its due date within such twelve (12) consecutive months shall constitute an Event of Default after five (5) calendar days without notice; or

14.1.2 Tenant fails to pay any Additional Rent as and when such Additional Rent becomes due and payable and such failure continues for more than five (5) calendar days after Landlord gives written notice thereof to Tenant; or

14.1.3 An Event of Default occurs under paragraph 21, subletting/assignment; or

14.1.4 Tenant fails to perform or breaches any agreement or covenant of this Lease not separately covered in this paragraph 14 to be performed or observed by Tenant as and when performance or observance is due and such failure or breach continues for more than thirty (30) calendar days after Landlord's giving written notice thereof to Tenant; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) calendar days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure or breach within such period of thirty (30) calendar days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach within a reasonable time not to exceed one hundred eighty (180) calendar days, provided, further, that in the event that the cure of such failure or breach cannot be cured within such one hundred eighty (180) day period and the cure of such failure or breach does not involve a cost in excess of \$100,000, then the Event of Default shall be waived so long as Tenant is diligently continuing to prosecute the curing of such failure or breach; or

14.1.5 Tenant (i) files, or consents by answer or otherwise to the filing against Tenant of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (ii) makes an assignment for the benefit of Tenant's creditors, (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant or of any substantial part of Tenant's property, or (iv) takes corporate action for the purpose of any of the foregoing; or

14.1.6 A court or government authority enters an order, and such order is not stayed or vacated within sixty (60) calendar days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial part of Tenant's property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding-up or liquidation of Tenant; or

14.1.7 Any event occurs which is specifically stated to be an Event of Default under this Lease; or

14.1.8 An event of default shall occur under any loan agreement, indenture or other agreement related to Debt of Tenant securing or relating to an amount in excess of \$50,000 and which event of default causes the lenders (or other parties) under such loan agreement, indenture or other agreement to exercise the right to accelerate the Debt or other obligations secured thereby. Tenant shall promptly give notice of any such default or acceleration to Landlord; or

15.1.9 Any representation or warranty of Tenant contained in this Lease shall have been materially and adversely false as of the date it was made and not corrected within thirty (30) calendar days after Landlord gives written notice thereof to Tenant; or

14.1.10 This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not stayed or vacated within thirty (30) calendar days; or

14.1.11 Tenant shall abandon the Facility for thirty (30) calendar days; or

14.1.12 Any judgment or order for the payment of money in excess of \$50,000 shall be rendered against Tenant and not paid or otherwise covered under any policy of insurance within thirty (30) calendar days after all rights to appeal shall have expired; or

14.1.13 Tenant fails to continuously maintain all insurance required to be maintained by Tenant in accordance with the terms and conditions of this Lease.

14.2 Landlord may treat the occurrence of any one or more of the foregoing Events of Default as a breach of this Lease. For so long as such Event of Default continues, Landlord, at its option and with or without notice or demand of any kind to Tenant or any other Person, may have any one or more of the remedies provided in this Lease, in addition to all other remedies and rights provided at law or in equity.

15. REMEDIES

15.1 Upon the occurrence of and during the continuance of an Event of Default, Landlord shall, in addition to, and not in derogation of any remedies for any preceding breach, with or without notice of demand (except as otherwise expressly provided herein) and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Event of Default have all of the following remedies available:

15.1.1 Landlord shall have the right to terminate Tenant's right to possession of the Facility and repossess the Facility by any lawful means without terminating this Lease. Landlord shall use good faith and reasonably prompt efforts, to the extent required by applicable law of the state where the Facility are located, to re-let the Facility for the account of Tenant for such rent and upon such terms as may be satisfactory to Landlord. For the purposes of that re-letting, Landlord may repair, and perform normal remodeling and alterations to the Facility. If Landlord fails to re-let the Facility, Tenant shall pay to Landlord the Rent in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease. If Landlord re-lets the Facility, but fails to realize a sufficient sum from the re-letting to pay the full amount of Rent in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease, after paying all of the costs and expenses of all normal and customary decoration, repairs, remodeling, alterations and additions and the expenses of the re-letting and of the collection of the rent accruing from the re-letting, Tenant shall pay to Landlord the amount of any deficiency upon Landlord's demand from time to time made.

15.1.2 Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The "worth at the time of determination" of all unpaid Rent which had been earned at the time of termination;

(b) The "worth at the time of determination" of the amount by which the unpaid Rent for the balance of the then Term of this Lease after the time of termination, excluding the potential Lease Term under any unexercised options for any Extension Terms, exceeds the greater of (A) the net rental proceeds actually received or to be received from any actual subsequent replacement tenant(s) for any Site or (B) the amount of such rental loss that Tenant proves could be reasonably avoided; and

(c) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The "worth at the time of determination" of the amounts referred to in clause (i) above shall be computed by allowing interest at the Overdue Rate. The "worth at the time of determination" of the amount referred to in clause (ii) above shall be computed by discounting such amount to present value by using the discount rate equal to the sum of two percent (2%) plus the then Treasury Rate. For the purpose of determining unpaid Rent under clause (i) and (ii) above, the Rent reserved in this Lease shall be deemed to be the total Rent payable by Tenant under paragraph 5 hereof.

15.1.3 Even if Landlord terminates Tenant's possession under this Lease, this Lease shall continue in effect and Landlord shall have the right to enforce all its rights and remedies under this Lease, including the right to recover all Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Facility or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of the Lease unless and until written notice of such termination is given by Landlord to Tenant. Landlord shall have unrestricted rights of entry for such purposes following an Event of Default. Landlord shall be entitled to an administrative fee of five percent (5%) of all amounts expended under this paragraph 15.

15.1.4 All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of Lease Amount or Additional Rent. If Tenant fails to pay any sum of money to be paid by Tenant or to perform any other act to be performed by Tenant under this Lease as and when due or required to be performed, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Tenant from any obligations of Tenant, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all necessary incidental costs shall be deemed Additional Rent hereunder and shall be payable by Tenant to Landlord on demand, together with interest on all such sums from the date of expenditure by Landlord to the date of repayment by Tenant at the Overdue Rate. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums (plus interest at the Overdue Rate) by Tenant as in the case of default by Tenant in the payment of Rent.

15.1.5 If Tenant abandons or surrenders the Facility, or any portion thereof, or an Event of Default by Tenant pursuant to paragraph 14.1.11 above shall have occurred, or Tenant is dispossessed by process of law or otherwise, any movable furniture, equipment, trade fixtures or personal property belonging to Tenant and left in the Facility, or any portion thereof, shall be deemed to be abandoned, at the option of Landlord, and Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner. If an Event of Default by Tenant pursuant to paragraph 14.1.11 above shall have occurred Landlord shall have the right, but not the obligation, to sublet the Facility, or any portion thereof, on reasonable terms for the account of Tenant, and Tenant shall be liable for all costs of such subletting, including the cost of preparing the Facility, or any portion thereof, for subtenants and leasing commissions paid to brokers.

15.1.6 Landlord shall be entitled to collect from Tenant Landlord's costs and expenses, including attorneys' fees and expenses, in connection with the enforcement of its remedies and/or the defense of any matter, including during an appeal and whether suit is actually filed or not.

15.1.7 Upon the occurrence of and during the continuance of an Event of Default, Landlord shall have the right to commence an action in any court of competent jurisdiction located in the State of New Mexico for the purpose of adjudicating the Event of Default and any or all of Landlord's rights and remedies under the Lease. Tenant hereby consents to the exercise of personal jurisdiction over Tenant in any such court in New Mexico and to New Mexico as the choice of venue.

16. LANDLORD'S RIGHT OF ENTRY

Landlord, and its respective designees, shall have the right to enter the Facility, and any part of the Facility, at any time during normal business hours and any part of the Facility on two (2) Business Days' advance notice and to inspect the same, post notices of non-responsibility, monitor construction, perform appraisals, perform environmental site assessments and engineering studies, and during the last twenty four (24) months of the Term or at any time after and during the continuance of an Event of Default, exhibit the Facility to prospective purchasers, and examine Tenant's books and records pertaining to the Facility, insurance policies, certificates of occupancy and other documents, records and permits in Tenant's possession with respect to the Facility; provided, however, that such entry shall (i) not unreasonably interfere with Tenant's conduct of its business operations and (ii) be subject to the escort of Tenant.

17. NOTICES

Notices, statements, demands, or other communications required or permitted to be given, rendered or made by either party to the other pursuant to this Lease or pursuant to any applicable law or requirement of public authority, shall be in writing (whether or not so stated elsewhere in this Lease) and shall be deemed to have been properly given, rendered or made, when received by personal delivery or overnight delivery or overnight courier delivery (or, if such delivery is refused, upon the date that delivery would have occurred but for such refusal) or facsimile transmission (with electronic confirmation therefor) with a confirmation copy of the entire original transmittal sent by overnight delivery or by overnight courier delivery addressed to the other parties as follows:

To Landlord:

To Tenant:

Any party listed in this paragraph 17 may, by notices as aforesaid, designate a different address for addresses for notice, statements, demands or other communications intended for it.

18. MECHANICS' LIENS

18.1 Except for liens created by or through the act of Landlord, Tenant shall not suffer or permit any mechanic's lien or other lien to be filed or recorded against the Facility, equipment or materials supplied or claimed to have been supplied to the Facility at the request of Tenant, or anyone holding the Facility, or any portion thereof, through or under Tenant. If any such mechanic's lien or other lien shall at any time be filed or recorded against the Facility, or any portion thereof, Tenant shall cause the same to be discharged of record or bonded over within sixty (60) calendar days after the date that Tenant receives notice of filing or recording of the same. However, in the event Tenant desires to contest the validity of any lien it shall (i) on or before thirty (30) calendar days prior to the due date thereof (but in no event later than sixty (60) calendar days after the filing or recording thereof), notify Landlord, in writing, that Tenant intends to so contest same; (ii) on or before the due date thereof, if such lien involves an amount in excess of \$10,000, bond over or deposit with Landlord security (in form and content reasonably satisfactory to Landlord) for the payment of the full amount of such lien, and from time to time deposit additional security so that, at all times, adequate security will be available for the payment or bonding over of the full amount of the lien together with all interest, penalties, costs and other charges in respect thereof.

If Tenant complies with the foregoing, and Tenant continues, in good faith, to contest the validity of such lien by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale or forfeiture of the Facility, or any part thereof, to satisfy the same, Tenant shall be under no obligation to pay such lien until such time as the same has been decreed, by court order, to be a valid lien on the Facility. If an Event of Default exists, Landlord may apply any deposit then held by Landlord with respect to any such lien to discharge such lien. If no Event of Default exists, then any deposit then held by Landlord will be so applied upon Tenant's written direction. Any surplus deposit retained by Landlord, after the payment of the lien shall be repaid to Tenant. Provided that nonpayment of such lien does not cause Landlord to be in violation of any of its contractual undertakings, Landlord agrees not to pay such lien during the period of Tenant's contest. However, if Landlord pays for the discharge of a lien or any part thereof from funds of Landlord (and not amounts deposited with Landlord by Tenant for such event), any amount paid by Landlord, together with all costs, fees and expenses in connection therewith (including attorney's fees of Landlord plus an administration fee equal to 5% of such costs and expenses), shall be repaid by Tenant to Landlord on demand by Landlord, together with interest thereon at the Overdue Rate. Tenant shall indemnify and defend Landlord against and save Landlord and the Facility, and any portion thereof, harmless from and against all losses, costs, damages, expenses, liabilities, suits, penalties, claims, demands and obligations, including attorney's fees, resulting from the assertion, filing, foreclosure or other legal proceedings with respect to any such mechanic's lien or other lien or the attempt by Tenant to discharge same as above provided.

18.2 All materialmen, contractors, artisans, engineers, mechanics, laborers and any other Person now or hereafter furnishing any labor, services, materials, supplies or equipment to Tenant with respect to the Facility, or any portion thereof, are hereby charged with notice that they must look exclusively to Tenant to obtain payment for the same. Notice is hereby given that Landlord shall not be liable for any labor, services, materials, supplies, skill, machinery, fixtures or equipment furnished or to be furnished to Tenant upon credit, and that no mechanic's lien or other lien for any such labor, services, materials, supplies, machinery, fixtures or equipment shall attach to or affect the estate or interest of Landlord in and to the Facility, or any portion thereof.

18.3 Tenant shall not create, permit or suffer, and, subject to the provisions of paragraph 21(a) hereof, shall promptly discharge and satisfy of record, any other lien, encumbrance, charge, security interest, or other right or interest which, as a result of Tenant's action or inaction contrary to the provisions hereof, shall be or become a lien, encumbrance, charge or security interest upon the Facility, or any portion thereof, or the income therefrom, other than Permitted Encumbrances. However, in the event Tenant desires to contest the validity of any other lien, encumbrance, charge, security interest, or other right or interest it shall (i) on or before sixty (60) calendar days prior to the due date thereof (but in no event later than sixty (60) calendar days after Tenant receives notice of the filing or recording thereof), notify Landlord, in writing, that Tenant intends to so contest same; (ii) on or before the due date thereof, if such lien, encumbrance, charge, security interest, or other right or interest involves

an amount in excess of \$10,000, bond over or deposit with Landlord security (in form and content reasonably satisfactory to Landlord) for the payment of the full amount of such lien, encumbrance, charge, security interest, or other right or interest, and from time to time deposit additional security so that, at all times, adequate security will be available for the payment or bonding over of the full amount of such lien, encumbrance, charge, security interest, or other right or interest together with all interest, penalties, costs and other charges in respect thereof.

19. END OF TERM

19.1 Upon the expiration or earlier termination of this Lease in its entirety, Tenant shall surrender the Facility to Landlord in good operating condition and repair suitable for the use of the Facility for the Permitted Use, except as repaired, rebuilt or altered as required or permitted by this Lease (or, in the case of termination pursuant to paragraph 13, as condemned). Upon expiration of this Lease in its entirety, Tenant shall remove all alterations not consented to by Landlord and all of Tenant's Personal Property from the Facility and the Bowling Equipment, unless Landlord has previously acquired the Bowling Equipment, in which event all Bowling Equipment shall remain with the Facility. Tenant shall repair at its sole cost any damage caused by such removal. Any Personal Property not so removed, including Tenant's Personal Property shall become the property of Landlord at no cost, expense or liability to either party. Twelve (12) months prior to the expiration or earlier termination of the Lease in its entirety and for each Site, Landlord and Tenant shall jointly prepare an inspection report identifying those matters requiring repair, restoration or replacement prior to surrender of the Facility. Without limitation of Landlord's regular inspection rights under this Lease, if the Lease is not extended for any Extension Term then 24 months prior to the expiration or termination of the Primary Term and if the Lease is extended for any Extended Term then eighteen (18) months prior to the expiration or termination of the Term, Landlord and Tenant shall re-evaluate the condition of the Facility and update the inspection report. Tenant covenants not to defer any replacement work during the final twenty (24) months of the Term.

19.2 If the Facility is not surrendered as above set forth, Tenant shall indemnify, defend and hold Landlord harmless from and against loss or liability resulting from the delay by Tenant in so surrendering Facility, including any claim made by any succeeding occupant founded on such delay. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease for six (6) years. In addition to the foregoing, and in addition to the Additional Rent, Tenant shall pay in advance and on a monthly basis to Landlord a sum equal to 1/12 of one hundred fifty percent (150%) of the Lease Amount payable during the preceding year during each month or portion thereof for which Tenant shall remain in possession of the Facility or any part thereof after the termination of the Term or of Tenant's rights of possession, whether by lapse of time or otherwise. The provisions of this paragraph 19.2 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein, at law or at equity.

19.3 All property of Tenant not removed on or before the last day of the Term of this Lease shall be deemed abandoned. Tenant hereby agrees that Landlord may remove all property of Tenant, including Tenant's Personal Property, from the Facility upon termination of this Lease and to cause its transportation and storage, all at the sole cost and risk of Tenant and Landlord shall not be liable for damage, theft, misappropriation or loss thereof and Landlord shall not be liable in any manner in respect thereto and Landlord shall be entitled to dispose of such property, as Landlord deems fit, without the requirement of an accounting. Tenant shall pay all costs and expenses of such removal, transportation and storage. Tenant shall reimburse Landlord upon demand for any expenses reasonably and actually incurred by Landlord with respect to removal or storage of abandoned property and with respect to restoring said Facility in accordance with the terms and conditions of this Lease.

19.4 Except for surrender upon the expiration or earlier termination of the Term hereof as expressly provided herein, no surrender to Landlord of this Lease or of the Facility shall be valid or effective unless agreed to and accepted in writing by Landlord.

20. MEMORANDUM OF LEASE

The parties agree to simultaneously with the execution of this Lease promptly execute a Memorandum of Lease in recordable form and either of the parties shall have the right, without notice to the other party, to record such Memorandum of Lease. If a Memorandum of Lease is recorded, Landlord and Tenant shall execute such customary amendments and terminations related thereto as may be required or requested by Landlord or Tenant.

21. SUBLETTING/ASSIGNMENT

21.1 Except as set forth in paragraph 21.2 below, Tenant shall not, directly or indirectly, without the prior written consent of Landlord, assign this Lease or any interest herein, or any interest in Tenant, or sublease the Facility or any part thereof, or permit the use or occupancy of the Facility or any portion thereof, by any Person other than Tenant, such consent not to be unreasonably withheld, conditioned or delayed. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. For purposes of this paragraph, the occurrence of a Corporate Control Event, shall be deemed to be an assignment of this Lease which is prohibited by the preceding paragraph unless Tenant obtains Landlord's prior written consent as set forth above. Any of the foregoing prohibited acts without such prior written consent of Landlord, if required, shall be void and shall, at the option of Landlord, constitute an immediate Event of Default that entitles Landlord to all remedies available at law and pursuant to this Lease. Tenant agrees that the instrument by which any assignment or sublease to which Landlord consent is accomplished shall expressly provide that the assignee or subtenant will perform all of the covenants to be performed by Tenant under this Lease (in the case of a partial assignment or a sublease, only insofar as such covenants relate to the portion of the Facility subject to such partial assignment or a sublease) as and when performance is due after the effective date of the assignment or sublease and that Landlord will have the right to enforce such covenants directly against such assignee or subtenant. Any purported assignment or sublease without an instrument containing the foregoing provisions shall be void. Unless and until expressly released by Landlord, Tenant shall in all cases remain primarily liable (and not liable merely as a guarantor or surety) for the performance by any assignee or subtenant of all such covenants, as if no assignment or sublease had been made.

21.2 If Landlord consents in writing, Tenant may complete the intended assignment or sublease subject to the following conditions: (i) no assignment or sublease (other than any minor sublease for a portion of the Facility if either (i) the use under such sublease is supporting or ancillary to the Permitted Use or (ii) such portion is excess or not necessary to Tenant's business operations at the Facility and the use is permitted by applicable laws and does not otherwise violate the other terms and conditions of this) shall be valid and no assignee or subtenant shall take possession of the Facility or any part thereof until an executed duplicate original of such assignment or sublease, in compliance with paragraph 21.1, has been delivered to Landlord, (ii) no assignee or subtenant shall have a right further to assign or sublease without the prior written consent of Landlord which consents shall not be unreasonably withheld, delayed, or conditioned, and (iii) Tenant shall, with respect an assignment of this Lease in its entirety upon its receipt, remit to Landlord 50% of Tenant's net profit on any sublet or assignment. Solely for purposes of determining such Tenant's net profit under clause (iii) above, the following shall apply: Tenant's net profit shall be determined on a monthly basis and is hereby defined as the amount by which all monthly payments from such subtenant or assignee paid to Tenant exceed the sum of (i) total monthly Rent paid by Tenant which is attributable to the space sublet or assigned (as reasonably agreed to by Landlord and Tenant, and shall be generally based upon the improved portions of the Facility) plus (ii) the Monthly Subtenant Allowance. The term "Monthly Subtenant Allowance" means the result of (A) all reasonable out-of-pocket expenses paid by Tenant in obtaining such sublease or assignment directly relating only to the portions of the Facility which is subject to such sublease or assignment (including, to the extent applicable, brokers fees, attorneys fees, and improvements to the Facility [which shall only be made in accordance with the terms of this Lease]) divided by (B) the total months in the term of the sublease or assignment.

21.3 Unless and until expressly released by Landlord (it being agreed that Landlord shall not be required to give such release), no assignment or sublease whatsoever shall release Tenant from Tenant's obligations and liabilities under this Lease (which shall continue as the obligations of a principal and not of a guarantor or surety) or alter the primary liability of Tenant to pay all Rent and to perform all obligations to be paid and performed by Tenant. The acceptance of Rent by Landlord from any other Person shall not be deemed to be a waiver by Landlord of any provision of this Lease. Consent to one assignment or sublease shall not be deemed consent to any subsequent assignment or sublease. If any assignee, subtenant or successor of Tenant defaults in the performance of any obligation to be performed by Tenant under this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments or subleases or amendments or modifications to this Lease with assignees, subtenants or successor of Tenant, without notifying Tenant or any successor of Tenant and without obtaining any consent thereto from Tenant or any successor of Tenant, and such action shall not release Tenant from liability under this Lease.

21.4 Tenant shall have no right to mortgage, grant a lien upon, encumber or otherwise finance Tenant's interest under this Lease or record a lien upon Tenant's interest in the Facility under this Lease, and Tenant shall not permit, cause or suffer to be recorded in the real estate records of the county in which the Facility are located any mortgage, deed to secure debt, deed of trust, assignment, UCC financing statement or any other document granting, perfecting, or recording a lien upon Tenant's interest in this Lease or interest in the Facility under this Lease.

21.5 If Tenant shall assign this Lease or sublet the Facility or any portion thereof to any Person other than Landlord, or request the consent of Landlord to any assignment, subletting, or other action which requires Landlord's consent hereunder, Tenant shall pay (i) Landlord a processing fee in each instance equal to \$ _____ and (ii) Landlord's attorneys' fees and costs incurred in connection therewith.

22. DISPUTE RESOLUTION.

In order to provide a mechanism for resolving disputes regarding the foregoing provisions of this Lease, the Parties agree as follows:

22.1 Negotiations. Within thirty (30) calendar days after either Party's receipt of a written notice of a dispute from the other Party, the Dispute shall be submitted for resolution through good faith negotiations between representatives of the Parties with authority to resolve the matter. Such persons shall negotiate in good faith to resolve the matter within sixty (60) calendar days (unless the Parties mutually agree to extend the negotiations). The negotiations shall be considered to have failed if, after at least three (3) joint meetings, either Party determines that no reasonable resolution can be reached and provides written notice to the other representatives of a request for mediation.

22.2 Mediation. Any Dispute which cannot be resolved by the negotiation provisions of paragraph 26.1 shall be subject to the following mediation process:

22.2.1 The mediation shall be conducted by one mediator who shall be selected jointly by the Parties within ten (10) calendar days after notice of the request for mediation. If the Parties cannot agree on a mediator, the third shall be appointed by a court of competent jurisdiction upon motion of either Party. Each Party shall share equally in the cost of the jointly appointed or court appointed mediator.

22.2.2 The mediation shall be non-binding and shall commence within five (5) calendar days after the selection of the mediator.

22.2.3 The mediation shall continue until the earlier of (i) thirty (30) calendar days after selection of the mediator, or (ii) the date the Dispute is settled or the mediator declares that the Parties are at an impasse and the Dispute cannot be resolved.

23 MISCELLANEOUS PROVISIONS

23.1 This Lease and all of the covenants and provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and the heirs, personal representatives, successors and permitted assigns of the parties.

23.2 The titles and headings appearing in this Lease are for reference only and shall not be considered a part of this Lease or in any way to modify, amend or affect the provisions thereof.

23.3 This Lease contains the complete agreement of the parties with reference to the leasing of the Facility, and may not be amended except by an instrument in writing signed by Landlord and Tenant.

23.4 Any provision or provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

23.5 This Lease may be executed in one or more counterparts, and may be signed by each party on a separate counterpart, each of which, taken together, shall be an original, and all of which shall constitute one and same instrument.

23.6 The term "Landlord" as used in this Lease shall mean only the owner or owners at the time in question of the Facility and in the event of any transfer of such title or interest, Landlord named in this Lease (and in case of any subsequent transfers, then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed hereunder, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the

grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

23.7 This Lease shall be governed by and construed and enforced in accordance with and subject to the laws of the State of New Mexico

23.8 Any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Facility (and the proceeds therefrom) and not against any other assets, properties or funds of (1) Landlord or any director, officer, member, shareholder, general partner, limited partner, or direct or indirect member, partner, employee or agent of Landlord or any of its members (or any legal representative, heir, estate, successor or assign of any thereof), and (2) any predecessor or successor partnership, corporation or limited liability company (or other entity) of Landlord or any of its members, either directly or through Landlord or its predecessor or successor partnership, corporation or limited liability company of Landlord or its general partners.

23.9 Without the written approval of Landlord and Tenant, no Person other than Landlord, Tenant and their respective successors and assigns shall have any rights under this Lease.

23.10 There shall be no merger of the leasehold estate created hereby by reason of the fact that the same Person may own directly or indirectly, (1) the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (2) the fee estate in the Facility. Notwithstanding any such combined ownership, this Lease shall continue in full force and effect until terminated by an instrument executed by both Landlord and Tenant.

23.11 Whenever in this Lease either party is required to take an action within a particular time period, delays caused by acts of God, war, major casualty, strike, labor shortage or other cause beyond the reasonable control of such party shall not be counted in determining the time in which such performance must be completed (except in the case of the obligation to pay money) so long as such party shall, promptly after becoming aware of the commencement of such delay, shall give the other party notice thereof and estimating the duration thereof.

23.12 If at any time a dispute shall arise as to any amount to be paid by one party to the other hereunder, the obligor may make payment "under protest", and such payment shall not be deemed a voluntary payment, and the right of the obligor to contest its liability for such payment shall survive such payment without prejudice to the obligor's position.

23.13 Landlord and Tenant each represent that they have dealt with no broker, finder or other Person who could legally charge a commission in connection with Landlord's acquisition of the Land or with the Lease or Tenant's Other Lease.

23.14 The parties hereto specifically acknowledge and agree that, notwithstanding any other provision contained in this Lease, it is the intent of the parties that their relationship hereunder is and shall at all times be that of landlord and tenant, and not that of partners, joint venturers, lender and borrower, or any other relationship other than that of a landlord and tenant.

23.15 The parties hereto specifically acknowledge and agree that time is of the essence with regard to all obligations under this Lease.

23.16 TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, AND WITH RESPECT TO ANY CLAIM ASSERTED IN ANY SUCH ACTION OR PROCEEDING, BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE FACILITY, ANY CLAIM OF INJURY OR DAMAGE, OR ANY EMERGENCY OR OTHER STATUTORY REMEDY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the parties have hereunto set their hands under seal on the day and year first above written.

TENANT

LANDLORD

<p>By: _____ Title: _____ Date: _____, 201__</p>	<p>City of Alamogordo</p> <p>By _____ Richard Boss, Mayor Date: _____, 201__</p>
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	<p>ATTEST:</p> <p>_____</p> <p>Rachel Hughs, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Lauren Truitt, City Attorney</p>
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STATE OF NEW MEXICO)
)SS.
 COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by Richard Boss, the Mayor of the City of Alamogordo, a New Mexico municipal corporation, on behalf of the corporation.

 NOTARY PUBLIC

My Commission Expires:

STATE OF NEW MEXICO)
)SS.
 COUNTY OF OTERO)
)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by _____ on behalf of the Tenant.

 NOTARY PUBLIC

My Commission Expires:
